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# IMPLEMENTATION OF FEDERAL HAZARDOUS WASTE LEGISLATION IN MARYLAND

ORIGINAL

## HEARING

BEFORE THE

## SUBCOMMITTEE ON COMMERCE, TRANSPORTATION, AND TOURISM

OF THE

## COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES

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COMPLETED

# IMPLEMENTATION OF FEDERAL HAZARDOUS WASTE LEGISLATION IN MARYLAND

SATURDAY, MAY 15, 1982

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE,
TRANSPORTATION, AND TOURISM,
COMMITTEE ON ENERGY AND COMMERCE,
*Baltimore, Md.*

The subcommittee met, pursuant to call, at 10 a.m., in the Steel Workers' Union Hall, 550 Dundalk Ave., Baltimore, Md., Hon. Barbara A. Mikulski, presiding (Hon. James J. Floria, chairman).

Ms. MIKULSKI. Ladies and gentlemen, may I have your attention, please. I wish to call the committee to order, welcome all those who are present, to thank you for coming here both to testify and to observe.

This is a hearing of the Subcommittee on Transportation, Commerce, and Tourism of the Energy and Commerce Committee of the Congress of the United States. This particular subcommittee has responsibility for a variety of areas of legislation, foremost of interest for this particular hearing is that this committee has responsibility for all Federal legislation related to the transportation, storage, and disposal of hazardous and toxic wastes with the exception of nuclear.

I decided to hold the oversight hearings in Baltimore for several reasons. First, as a member of this particular subcommittee, my intention is to ascertain how Federal legislation that pertains to the regulation and disposal of hazardous waste is being implemented in the third congressional district.

I am talking specifically about three sites that I intend to use as my case studies. Hawkins Point, American Recovery, Inc., and the Monument Street Landfill. Each offers a unique situation, or not so unique, though each has its own unique characteristics.

Second, as I listen to the testimony of each of you, I will be evaluating how the State of Maryland is enforcing Federal regulations that affect hazardous waste. I will also be looking very carefully at the way in which Federal agencies, particularly EPA, responsible for monitoring such waste, are fulfilling their responsibilities. In this way I hope to be able to pinpoint deficiencies both in the law itself and in the way it is being carried out.

Third, I want to hear firsthand and try to understand the method by which citizens' groups with grievances about real or potential dangers in their community can find a satisfactory answer to their grievances. It has been my experience from working with

the Monument Street Improvement Association, the Curtis Bay Improvement Association, and the Hawkins Point Improvement Association that none of these groups had a forum in which to present their concerns.

They could not find a clear line of authority to ask for help, and finally, they didn't even get a genuine response from the agencies who are supposed to be there to protect the citizens. I cannot believe that there is not a better way for people with real fears and legitimate questions to find satisfactory answers. If no such forum for grievances exists, then it is high time we find out why and make sure that one exists in the immediate future.

What we are talking about here today is saving lives. We are talking about the right of human beings to live without fear of disease or impairment from chemical poisoning. We are talking about the ability or lack of ability of Government to respond to the people. I intend to nudge, question, and push until I find the answers to the problems that seem to be part of this particular area of grievances.

At the conclusion of today's testimony, I will review with committee staff the entire body of information. Within 1 week to 10 days I expect to take the next logical step in helping the communities represented here find suitable answers to the questions that they have.

What is happening here in Baltimore is happening throughout the State of Maryland. And what is happening here in the State of Maryland is happening throughout the country. Not only careless or illegal dumpers, but legally, Government-sanctioned dumpers have found that there is an inability of Government to control—illegal dumping—and that this situation is not only peculiar to Baltimore; it is truly a national epidemic.

As your Federal office holder, I intend to identify those areas of law, regulation, procedure and process that deal with the issues of chemical poisoning and to insure that the communities have an opportunity to present their grievances in a lawful way that will be responded to.

As we move into the hearing itself, I would like to introduce those staff advisers to myself who will be advising me during these proceedings, and then outline the ground rules. And then we will move on to testimony.

On my right is Richard Fortuna, a staff consultant to the subcommittee who has been our adviser throughout all of the national hearings that we have held on this topic. Mr. Fortuna is the official staff representative and will be my technical adviser.

On my left is Ms. Regina Friedlander, who is the district director of my Baltimore office and has been most directly involved with the improvement associations, the community groups and also with agencies who have chosen to call.

The ground rules are simple and straightforward. We have asked you to present your testimony in a crisp, straightforward manner. And then we will proceed to appropriate questions.

I will inform you that this is an official congressional hearing, an official transcript is being made of this hearing. I will encourage you to tell me the truth, nothing but the truth. And that any eva-

sion, lies, willful misinterpretations will be subject to the penalties normally prescribed by the House of Representatives.

With that, I would also like to acknowledge some colleagues in Government here who have had a long-standing interest in this matter, and particularly in the Monument Street Landfill. We are represented by some very able men in Annapolis and I would like to acknowledge the presence of Senator Joseph Bonvegna, Delegate Louis Cavallero, and Delegate Anthony DePietro.

Gentlemen, would you please rise and have people know of your presence.

I have been in contact with our State senator and our delegate on this issue, and I must say that they have shown great interest in this and I know they are here to observe the proceedings.

The witnesses that I have invited will be allowed to present both oral testimony and, subsequently, will be allowed to submit any additional written testimony that they wish. The Chair would also like to advise those people present that if you were not one of the called-upon witnesses, but you have testimony you would like to present to the subcommittee, you may present that in written form.

The record will be kept open for approximately 10 days after this hearing, and that that material should be forwarded to Ms. Regina Friedlander in my Baltimore office.

So we welcome you, and now I would like to proceed with the hearing. As my first witness, I would like to call the Monument Street Improvement Association.

Good morning. Before I ask you to proceed with the materials that you wish to present, I would like each one of you to introduce yourselves, tell me your role in the organization and, also, for the record, I would like to have the name of the association that you represent, its history just briefly, its purpose, and what community activities other than the landfill battle that the Monument Street Improvement Association has engaged in.

Ms. Muldowney, do you prefer to go first?

Ms. MULDOWNEY. Yes.

My name is Margaret Muldowney and I am president of Monument Street Improvement Association. We have been formed since 1974. Basically, we have been working with the landfill issues. But there have been other things that came from the landfill, like rats and other things. But mostly it is the landfill that we have been working with.

Ms. MIKULSKI. Have you participated in any other activities; for senior citizens?

Ms. MULDOWNEY. Well, I am president of Southeast Community Organization [SECO] and participate in their affairs.

Mrs. GLACKEN. I am vice president of the Monument Street Improvement Association. Our improvement association was basically started because of the Monument landfill. We first started meeting on the sidewalks, and we decided to form this group in order to get a little bit of recognition, because we found that we were talking to blank walls. That is about it.

Mr. BECKMAN. My name is Glen Beckman and a member of the Monument Street Improvement Association. I got involved, as Margaret is well-known for twisting arms, and she needed some sup-

port. So I volunteered my services. I really got involved when I felt we were being deceived and lied to. I am also a member of the Board of SECO of which Margaret is the president. We are involved in the gas and electric price hikes, the senior citizens, and other neighborhood problems.

Ms. MIKULSKI. Thank you, Mr. Beckman.

Ms. Muldowney, will you be the primary spokesman for the group?

Ms. MULDOWNEY. Yes.

Ms. MIKULSKI. Then, Ms. Muldowney, I would like you to proceed and tell me in your own way what you would like the committee to know about this particular situation.

**STATEMENTS OF MARGARET MULDOWNEY, PRESIDENT, MONUMENT STREET IMPROVEMENT ASSOCIATION; ETHEL GLACKEN, VICE PRESIDENT, MONUMENT STREET IMPROVEMENT ASSOCIATION; AND GLEN BECKMAN, MONUMENT STREET IMPROVEMENT ASSOCIATION**

Ms. MULDOWNEY. At a public meeting at St. Matthew's Church nearly 10 years ago today, Baltimore city officials explained the mechanics of operating a landfill. They showed us slides and photographs of a smoothly operating, well-managed landfill operation. At the time, three promises were made to the community:

One, the landfill would permit only bulk trash; two, the landfill would be covered only with—covered daily with a half foot of dirt; and three, the State health department would closely monitor the operation with weekly inspections.

On May 31, 1973, the landfill opened. Green trash bags appeared on our porches. I remember sucking in my breath and asking, what are we in for? My neighbor Martha called. "Did you get your garbage bag," she asked? That was the first of a thousand phone calls and first of a thousand lies that this landfill has produced. This bulk trash landfill started to smell like rotten eggs and putrifying garbage.

Since bulk trash is usually not associated with stench, we called the city. We spoke to Mr. Ed Moore, who said he was in charge of solid waste in the city. He told us the landfill did not stink. He blamed Armco Steel and other nearby industries. He flatly denied there was any garbage being dumped there.

We started holding neighborhood meetings on the sidewalks. When city sanitation trucks started bringing it in by the truckload, Mr. Moore changed his tune: Yes, we are accepting garbage, but it will be just temporary. Temporary became months, then years.

Meeting often with city officials got us nowhere. In sheer desperation we picketed the front of the gate. The mayor got the message and promised to return the landfill to bulk trash and meet with us. There was no meeting. Within weeks, garbage started coming back into the dump. Angered that the mayor was avoiding us, we finally went to him, picketing the restaurant where the mayor was eating. Finally, the city got the message and discontinued letting in garbage.

Even after that, teams of local residents found it necessary to monitor the incoming flow of cars and trucks. They were letting things in that were totally covered up. We had to insist that they uncover it and look at it. We made them take back their garbage. Although we have been accused of not being a sophisticated community, we certainly have learned to recognize blatant lies and gross mismanagement when we see them.

Ethel?

## STATEMENT OF ETHEL GLACKEN

Mrs. GLACKEN. What started out to be a safe, sanitary landfill became a nightmare for residents living near the Monument Street landfill. We were told by Mr. Ed Moore, bulk trash only. But then came the garbage. With the raw garbage came flies, mosquitoes and rats. When we asked the city to do something about the rats, we were told there wasn't enough money appropriated for rat bait.

The sour odor of the garbage was so rank in our homes that it was too embarrassing to invite friends to visit. When we complained, disinfectant was used to cover the garbage odor. Now instead of just one odor, we had two sickening odors in the air. Then there was another odor in the air and the neighbors started complaining about the smell.

The State health department tested the air and found a dangerously explosive situation was present. So they installed pipes down in the ground to vent the methane gas. Of course, some time later, Mr. Trainor told us that methane gas does not explode. I do not think Mr. Trainor was doing his homework.

Then in April 1979, while working, a bulldozer operator broke open a 50-gallon drum that had been illegally dumped there in the landfill. The chemical odor was unbearable. Then we asked ourselves: If one drum, how many more could be buried there? We started looking for the answers. We joined SECO and with the aid of a SECO staff person, we decided to do a little researching on our own.

We visited the State health department. I remember that day very well. I had mixed emotions. As we looked through the files on the Monument Street landfill, I was hoping we would find nothing. But instead, everything we feared was there. Pictures of drums were actually leaking chemicals into the soil. Just how much can one neighborhood endure? We have lived through 8 years of lying and conniving by the city and State. Now, it is time for the truth.

## STATEMENT OF GLEN BECKMAN

Mr. BECKMAN. On March 28, Thomas Andrews, director of the department of natural resources, informed Mayor Schaefer by letter, stating: Site investigations with the city employee responsible for operations of the landfill did confirm the presence of several hundred drums which had been crushed and buried in the landfill. Adjacent soils were saturated with what appeared to be various aromatic hydrocarbons such as paint thinners and waste solvents.

We have searched our files and also the State health department files for some type of response from the mayor to the community or the health department. As to this day his response to the illegal

dumping has never been made public. After the April drum explosions and fires, we contacted the State health department and were told there were only a few drums—and that they have been removed. If an investigation was already going on in March against American Cooperage for illegal dumping, now confirmed 1,200 drums, does this not constitute the start of a coverup.

Copy of State health department files revealed to us pictures of drums and in the American Cooperage, not just a few drums, but 1,200 or more. From that point on, we knew what was there and the files were also confirming what the State health department was denying.

Was there a coverup again? In July 1981, 2 or 3 feet of sludge from the new harbor tunnel project were deposited on the site as cover material. This material was saturated with toxic total chromium and hexvalent chromium.

This time a representative of the mayor's office and State and city health departments said they were caught by surprise. Arthur Cable said the test at the site turned up clearly defined layers of chrome in the soil. The health department ordered the chromium removed by June 25, but inspections on June 27 through August 3 still showed areas of chrome and yellow and green stains from this toxic chemical were still present.

At a meeting with Mr. Griffin, Governor Hughes' executive aide, last Thursday, Mr. William Eichbaum stated he is not satisfied with the way the city is handling the still-present chrome deposits. He stated after every rain more chrome comes to the surface. Why should we be exposed to this type health hazard after almost a year has passed? This is total mismanagement of the State and city health hazardous waste procedures. Who is responsible?

In December a letter from William Eichbaum to the community referred to the alleged illegal disposal of hazardous waste. You don't go to court and fine American Cooperage $50,000 for alleged illegal disposal of hazardous waste. Again, was there a conspiracy or coverup?

Adding fuel to the fire, EPA agreed to come in and do tests. The community was elated. We were finally going to get to the answers but someone pulled the rug from under us. But pressure brought on by Ron Nelson and Mayor Schaefer made EPA reverse its promise to the community. Was there a continuation of an ongoing coverup? We are really beginning to wonder now.

On April 23, almost a year later, William Eichbaum finally confirmed the presence of 1,200 or more drums illegally dumped at the Monument Street landfill. Showing pictures and other evidence. We have had these same pictures and other information of the 1,200 drums for over 9 months along with William Eichbaum's December letter of alleged illegal disposal of hazardous waste:

> This in our minds constituted a coverup or conspiracy. On the April 28th meeting with the city and State officials which was held at Emmanuel Lutheran Church, 12 community organizations were unanimous in demanding soil tests and giving the community a right to know.

On Thursday, a meeting called by Mr. Griffin, where in attendance were William Eichbaum and other community leaders, the community leaders insisted the soil tests must be done. Also turned down was the Governor's proposal to have Johns Hopkins as a con-

sultant to test the site. The community wants an out-of-State neutral and unbiased consultant. Mr. Griffin can speak on this matter later if he so wishes.

In closing, the local government has apologized for the chromium being dumped. The local government has apologized for the illegal dumping of the hazardous waste. A local health official has apologized about making the statement of alleged disposal of hazardous wastes. The apology is not accepted.

The community has one goal, to live in health and mental peace of mind, that the city and State officials have taken away from us. How dare they. We demand our most precious commodity back, the commodity of choosing our own destiny instead of the insensitivity and egotistical health bureaucrats choosing it for us.

Thank you.

Ms. MIKULSKI. Thank you very much.

I would like to thank you for your crisp testimony and the factual presentations that you made. I have a few questions that I would like to pursue.

Mr. Beckman, you referred to a letter written by Thomas Andrews to the city government describing the existence of these drums; is that correct?

Mr. BECKMAN. That's right.

Ms. MIKULSKI. May I see this letter, please?

Mr. BECKMAN. I don't have it at present. I think our attorney has it.

Ms. MIKULSKI. Fine. Would you then submit to me a copy of that letter so that I may review it myself?

Mr. BECKMAN. Yes.

Ms. MIKULSKI. Now, you described for me the concerns that brought you to this particular issue. I just want to be sure I understand the story, then go from there. That in 1972, the city of Baltimore created a landfill for solid waste disposal.

Ms. MULDOWNEY. That was our understanding.

Ms. MIKULSKI. Primarily bulk trash.

Ms. MULDOWNEY. Yes.

Ms. MIKULSKI. I would like to affirm your understanding because I was a member of the Baltimore City Council at that time, sponsored the legislation along with my two other colleagues creating that landfill. And we had had a thorough understanding on: One, what its construction was going to be, and two, what its contents were going to be. And it was also meant to be limited to bulk trash.

In fact, we had hoped it would never have anything more in it than maybe some old McDonald's wrappers or something like that. Now, that was that. Then you began to have problems just with that particular area of garbage being dumped instead of bulk trash; is that correct?

Ms. MULDOWNEY. Right.

Ms. MIKULSKI. But then at a certain other time you became aware of the possibility that there were materials other than what the city was bringing in to you.

Ms. MULDOWNEY. Right.

Ms. MIKULSKI. Let me have for my memory again, when did you become aware of the possibility that there was something else in that landfill?

Ms. MULDOWNEY. That was on April 19, 1979, when a bulldozer driver broke open a drum and the fumes went all over the neighborhood.

Ms. MIKULSKI. This was April of 1979?

Ms. MULDOWNEY. Right.

Ms. MIKULSKI. What occurred at that particular time? Was there an explosion, a noxious smell?

Ms. MULDOWNEY. The drum broke open, there were fumes all over the neighborhood. They were coming under the doorway and in windows and everything. People were getting sick, headaches, upset stomach, nauseating. We called out the police department, the fire department. They wanted to take us to the hospital. We have the police report right there.

Mr. BECKMAN. I can read an excerpt from the police report.

Ms. MIKULSKI. Fine. What did the police report say?

Mr. BECKMAN. From the smell, the officer spoke to Ms. Muldowney, who stated that at about 1500 hours, the smell became so bad that she contacted the city air pollution control center and had talked to Mr. Miller in order to determine if this agency knew of the problem and would do anything about it.

She further stated Mr. Miller had advised her that some time before noon at this date a city trash truck carrying 50 gallon drums dumped same at the landfill. The drums were dumped without the landfill's knowledge, containing some type of unknown liquid. Later when the landfill's bulldozer was working in the area, it ruptured one of the drums, causing the odor.

Ms. MIKULSKI. That then became the saga of the drums. Who did you go to and what was their response? You outlined you went to city hall.

Ms. MULDOWNEY. At that time we just contacted the air pollution people. I expect they thought everything was going to quiet down. But we went to the State health department and looked in their records. This was a long time later. What we found in their files was—we were hoping we would find nothing, but we found everything in there. Pictures of the drums, field inspector reports that indeed there were drums there.

Ms. MIKULSKI. This was the State health department files?

Ms. MULDOWNEY. In their own files.

Ms. MIKULSKI. When did you make this visit; approximately what month, what year? Was it last week, last year?

Ms. MULDOWNEY. I would say maybe a year and a half ago.

Ms. MIKULSKI. That would be somewhere——

Ms. MULDOWNEY. No, about 1 year ago.

Mr. BECKMAN. It is between 9 months to 1 year.

Ms. MIKULSKI. OK.

Ms. MULDOWNEY. Anywhere within there. I can't remember.

Ms. MIKULSKI. Within the past year, then, you reviewed those files?

Ms. MULDOWNEY. Yes.

Ms. MIKULSKI. And found there were drums?

Ms. MULDOWNEY. They had pictures of drums with arrows pointing to the holes where it was leaking into the ground.

Ms. MIKULSKI. Did it have a description of the content of the drums, do you recall?

Ms. MULDOWNEY. It said various aromatic hydrocarbons, or something like that.

Ms. MIKULSKI. Where then did you take your concerns after you did that, your concerns and your request?

Ms. MULDOWNEY. We took our concerns, I think, back to the community and to the press because nobody else would listen.

Ms. MIKULSKI. Who did you go to that you said would not listen?

Ms. MULDOWNEY. Well, it wasn't the fact that they weren't listening. They were listening but they wouldn't tell us anything.

Ms. MIKULSKI. But who were they?

Ms. MULDOWNEY. The State health department. Mr. Paul Thompson. Ron Nelson. And you know, we couldn't get answers there.

Ms. MIKULSKI. And what were you asking for, Mrs. Muldowney?

Ms. MULDOWNEY. We were asking for the same thing that we are asking for now, an investigation to find out what is in there. To test the soil. We have always asked for the soil to be tested by city and State officials and they would never do it. They would never even hear of it.

Ms. MIKULSKI. They just flat out refused; is that correct?

Ms. MULDOWNEY. Exactly. In fact, this April 28 meeting we had, they were overheard to say in no way was any community group going to back them down and make them take samples.

Ms. MIKULSKI. Ms. Muldowney, your attorney representing Monument Street Landfill, Mr. Graham Wisner, who also testified in Washington in a national hearing on the Resource Recovery Act, which is essentially what we are reviewing today, talked about subsequent meetings with EPA and so on.

Could I ask you, are you familiar with the meeting that Graham Wisner had with the officials of EPA, and could you tell me then in your recollection what EPA promised you?

Ms. MULDOWNEY. I only know what Graham told me and that was that Peter Bibko, from Philadelphia, agreed to investigate. I personally spoke to Mr. Orterio Villa from Annapolis and he agreed to do the tests. He said not only did EPA have the time, but they had the money and interest to go in and do the tests.

Ms. MIKULSKI. Ms. Muldowney, members of the Monument Street Improvement Association, I have here a memo to the files from Orterio Villa, Director of the Central Regional EPA Laboratory in Annapolis, Md. I will furnish your organization with a copy of this.

Would you please pass that to Ms. Muldowney. In this correspondence, it says this: On Tuesday, December 15, Howard Wilson, Orterio Villa, EPA, Jim Pittman Maryland Department of Mental Health and Hygiene met with Graham Wisner concerning the Monument Street Landfill. After a brief summary of the situation and history of the landfill, Mr. Wisner stated two prime areas of concern to the citizens he represented. One is that EPA review all data for monitoring the wells and make it available to the citizens he represents and two, that EPA further investigate the northeast corner of the site for contamination from unauthorized hazardous waste disposal.

The second paragraph reads: These requests seem reasonable, and pending clearance from the region and hopefully concurrence with Ron Nelson of Maryland Department of Health and Mental

Hygiene, I—meaning Mr. Villa—propose that we review and disseminate the information on monitoring the wells and plan to conduct a sampling operation of the northeast corner of the site.

Were you ever aware of this?

Ms. MULDOWNEY. Yes, we were.

Ms. MIKULSKI. Second, I have my letter from Peter N. Bibko, Regional Administrator of EPA. You have received a copy of his letter to me?

Ms. MULDOWNEY. Yes.

Ms. MIKULSKI. Six weeks after he met with you, he finally got around to telling me what it was all about. When he finally did write me he said because of the association's understandable concerns about hazardous wastes at the site, the EPA agreed to two important actions. To review and interpret monitoring data collected by the State on a regular basis. He did not agree to do their own. No. 2, to further investigate the northeast corner of the landfill for contamination from unauthorized hazardous waste disposal. This was the promise he made to me which I then sent to you. Had this occurred, would you have been satisfied?

Ms. MULDOWNEY. Yes.

Ms. MIKULSKI. Has it occurred?

Mr. BECKMAN. No.

Ms. MULDOWNEY. No; it hasn't.

Ms. MIKULSKI. What has happened since this correspondence?

Ms. MULDOWNEY. Nothing.

Ms. MIKULSKI. You said that you have had meetings subsequently with city, State, and EPA. When was the last meeting you had with EPA and what did they say?

Ms. MULDOWNEY. Well, we personally have never met with EPA. Maybe, Scott, could you answer that?

Mr. SCHWARZ. No; we haven't met with them.

Ms. MIKULSKI. When was the last meeting you met with State officials and what did they say?

Ms. MULDOWNEY. That was April 28 at our meeting at Emannuel Lutheran Church. At that time they just said, "No; they were not taking the tests." I think Mr. Beckman asked Ron Nelson point blank, will you take the soil tests, and he said "No."

Ms. MIKULSKI. Did they give a reason?

Ms. MULDOWNEY. I think they did give a reason.

Mr. BECKMAN. Ron Nelson had like a gut feeling that he himself doesn't feel soil borings are the best thing for the landfill.

Ms. MIKULSKI. When you said what you are going to do and then they said, we are not going to do the tests, did you ask why?

Ms. MULDOWNEY. Yes, we did.

Ms. MIKULSKI. What was their response?

Ms. MULDOWNEY. I think their response was that it was hazardous. It was dangerous. They were afraid of explosions; but we have had explosions. They were afraid of fires and we have had fires. So I mean, I don't think——

Ms. MIKULSKI. So in fact what you were told by the State health department officials was that it is too dangerous to find out what is the danger if dangerous substances are buried there?

Ms. MULDOWNEY. Exactly.

Ms. MIKULSKI. Then of course the natural question one might have, if it is too dangerous to do the tests, then what then——

Ms. MULDOWNEY. How safe is it to live in the area.

Ms. MIKULSKI. When was your last meeting with city officials?

Ms. MULDOWNEY. That was the same evening, April 28.

Ms. MIKULSKI. What happened there?

Ms. MULDOWNEY. Well, it was kind of a heated meeting. I am afraid the city officials——

Ms. MIKULSKI. I have received reports, Mrs. Muldowney. I understood you could steam crabs at that meeting.

Ms. MULDOWNEY. Really. So we didn't get a chance to talk too much except after the meeting and then after the meeting they were rather belligerent.

Ms. MIKULSKI. What did they say to you? In other words, did you reiterate the same request?

Ms. MULDOWNEY. I left immediately after the meeting, so I think Mr. Beckman could answer that better.

Ms. MIKULSKI. In the public forum, what did they say to you?

Mr. BECKMAN. Really nothing. They wanted to present their charts and graphs. But we were only there for one issue. We wanted the soil test done. If we get the soil test done and nothing is wrong, we will go home. But until the soil test is done and they prove it unhazardous, we will continue.

Ms. MULDOWNEY. They have just made it obvious from the very beginning that they don't intend to take the soil test.

Ms. MIKULSKI. I see.

Mr. BECKMAN. Oh——

Ms. MIKULSKI. Mr. Beckman?

Mr. BECKMAN. You were talking about—Paul Ambrose was at the April 28 meeting and really no commitment came from EPA, region III at that time, either.

Ms. MIKULSKI. Has EPA given you any reason why they don't intend to honor the promise which they themselves said seemed reasonable?

Ms. MULDOWNEY. No; they have never given a reason, but we had a meeting with the Governor's aide, Mr. Griffin and Mr. Eichbaum the other day and I just heard EPA just wouldn't put up the money, but there was no reason given for it.

Ms. MIKULSKI. When did you meet with Griffin and Eichbaum?

Ms. MULDOWNEY. This last Thursday, the 13th.

Ms. MIKULSKI. On May 13. What did they talk about with you?

Ms. MULDOWNEY. Well, they had I think a proposal, this is my opinion, I am not certain of it, from Johns Hopkins University, to come in and take tests along with the city and State. We told them that we didn't want Johns Hopkins. We wanted a neutral, somebody from out of State. They came up with the idea, someone came up with the idea of asking someone from Tennessee, University of Tennessee to do the tests. I think Mr. Eichbaum said that he knew people from there.

Ms. MIKULSKI. The Chair would like to bring to the Momument Street Improvement Association's attention that Hopkins has just finished doing a study of Tennessee, so make your own decisions.

Ms. MULDOWNEY. We know that. We said the community should be involved and wants to be involved in whatever takes place.

Mr. BECKMAN. We were told the proper procedure on a matter like this was a totally outside concern to relieve the communities of anxieties.

Ms. MIKULSKI. I understand that on May 11, did you meet with city officials?

Ms. MULDOWNEY. Yes; Mr. Wasserman and Mr. Murutis.

Ms. MIKULSKI. What was the nature of that meeting?

Ms. MULDOWNEY. Apologies, mostly.

Mr. BECKMAN. A meeting full of apologies.

Ms. MULDOWNEY. Apologies for everything. Apologies for the chemicals, apologies because our neighborhood, well, they said it was an important neighborhood. And if we ever need lights or anything fixed, you know, around the neighborhood, they would be glad to do it. But mostly it was apologies.

Ms. MIKULSKI. Did they promise to do the northeast corner investigation?

Ms. MULDOWNEY. They promised nothing like that.

Ms. MIKULSKI. Except street lights?

Ms. MULDOWNEY. And any other little thing that we needed taking care of.

Ms. MIKULSKI. Except the landfill; is that correct?

Ms. MULDOWNEY. Yes.

Ms. MIKULSKI. Fine.

Ms. MULDOWNEY. I think they did say that the mayor was agreeable to going into the landfill at one time. And the city and State were supposed to pay half, but it was nothing real definite. Just in passing they mentioned it.

Ms. MIKULSKI. Who made what statement about what? The mayor would go into the landfill——

Ms. MULDOWNEY. Mr. Wasserman.

Ms. MIKULSKI. He told you what?

Ms. MULDOWNEY. That the mayor was ready to take the money and pay half with the State and go into the landfill.

Ms. MIKULSKI. And do what?

Ms. MULDOWNEY. I suppose take the soil samples, but he never gave a reason for why he didn't do it. Do you remember what he said?

Ms. MIKULSKI. I am trying to find out not why he didn't do it. What did he tell you he would do?

Mr. BECKMAN. From what I can get from the conversation we had with Mr. Wasserman, that the mayor was willing to even go in and just dig it up. But the State health department said it would not be a wise thing to do. But he was——

Ms. MULDOWNEY. Yes; that was basically what it was.

Mr. BECKMAN. Yes. And to the point, that is when we got into the discussion of Johns Hopkins doing the test. We did not want any local consultants. We wanted an out-of-State consultant.

Ms. MIKULSKI. Mr. Wasserman told you the mayor was willing?

Mr. BECKMAN. Yes.

Ms. MIKULSKI. I would like to move on if I could to some of the national ramifications of this. As I said in my opening statement, I am very concerned about the way citizens have been treated. And not only your testimony in terms of being treated like a racquet ball situation here, but that citizens, whether they have been farm-

ers from Colorado, citizens from a similar landfill in Colorado, or citizens who were concerned about other matters, throughout this country there is this question of the way government responds to citizens.

Let me ask you this question and answer it any way you want. What would have been helpful to you and what would you have liked to have seen happen in terms of procedures and response from the city, State and EPA?

Mr. BECKMAN. Shall I do it?

Ms. MULDOWNEY. Go ahead.

Ms. MIKULSKI. In terms of resources provided to you.

Mr. BECKMAN. It goes back to day one that I think a mood of credibility was set from 1973 until the drum incident. I think a mood was set up against us from the State health department and the city government. I think that is the main crux of the situation.

Then we come in what we call hazardous waste. They didn't want to hear it. They didn't want to hear us. Their credibility now with us is sub zero because the way we have been treated. We don't believe anything that they say. They may be right. They may not be. But they haven't told us anything different to proved. I wish they would shut us up. I am getting tired of this. Shut us up. Do the tests. Let's go home. And give me back my neighborhood, give me back my community.

Ms. MIKULSKI. Ms. Muldowney?

Ms. MULDOWNEY. Yes, I think in answer to your question what I would like to see is somebody that would really listen to us and paid attention to us right from the very beginning. Since the State wouldn't and the city wouldn't, there has, there should have been somebody that would have really paid attention and listened to us.

Ms. MIKULSKI. Under the Resource Conservation and Recovery Act, the RCRA Act as it is talked about, the Government has passed laws mandating the fact it is the State's responsibility to implement the Federal laws. During our national hearings I asked citizens such as ourselves this question: Would it have been helpful if you would have had a place at EPA that was kind of independent of normal bureaucracy that you could have entered a channel and No. 1, got even a briefing on the law, No. 2, technical assistance to evaluate what records were telling you.

I mean, you are sitting here as ordinary, terrific Americans talking about hydrocarbons this and methanes that and chromiums that. And I don't think—you went to the Patterson High School, didn't you, Ms. Muldowney?

Ms. MULDOWNEY. Yes; I did.

Ms. MIKULSKI. That when you went to Patterson or I went to the Institute of Notre Dame that we spent much time knowing what that was going to be all about.

Ms. MULDOWNEY. That is true.

Ms. MIKULSKI. And that you needed technical assistance to advise you of that and what your rights were, the procedures. But also you would have had someone to listen to you. And advise you. And if it constituted some degree of hazard or potential hazard, would have gone in and done the test and came back and said——

Ms. MULDOWNEY. Right, because we did it the long, hard way. If that would have been possible, it would really have been great.

Ms. MIKULSKI. Or if it—the agency—had what you wanted, like a court of last resort at EPA to be able to come in. You want to be sure that somewhere there is a bottom line that says we have to listen to the people and address their fears with seriousness and assume that somewhere—that even though we might scientifically prove that their concerns are not justified—but at least somewhere their right to express those concerns is justifiable.

Ms. MULDOWNEY. Exactly.

Ms. MIKULSKI. Is that correct?

Mr. BECKMAN. That's correct.

Ms. MIKULSKI. And that somewhere along the line you would have liked the local and State government to respond. But, failing that, you feel citizens need a national place to go to.

Ms. MULDOWNEY. Right.

Ms. MIKULSKI. That's correct?

Ms. MULDOWNEY. That's correct.

Ms. MIKULSKI. Well, I think you have answered my questions for the purposes of this hearing more than adequately. I have got the picture. I want to move on a little more with the Monument Street landfill. This panel is excused and I thank you. Before you leave, I would like to compliment you not only on your testimony, but on your steadfast pursuit of this matter, because Baltimore is the neighborhood, our country is the neighborhood, and it is the people in these neighborhoods who the Government is working for.

I know today is the Preakness and there is going to be a lot of media hype on the short-sprint runners. But I think that the real victory and real moral race should go to the long-distance runners in our communties. I can tell you, had you not pursued this, I don't think we would have gotten it to this level. I would like to compliment you on your persistence.

Ms. MULDOWNEY. Thank you.

Mr. BECKMAN. Thank you very much.

Ms. MIKULSKI. The Chair would like to now call Mr. Richard Trainor to the table.

Good morning, Mr. Trainor. For the record, would you identify yourself in terms of your title, scope of responsibility, length of time having that responsibility, and your professional education.

**STATEMENTS OF RICHARD H. TRAINOR, DEPUTY DIRECTOR, DEPARTMENT OF PUBLIC WORKS, BALTIMORE CITY, ACCOMPANIED BY GEORGE G. PEROLIKAKIS, HEAD OF BUREAU OF HIGHWAYS, HAZARDOUS WASTE**

Mr. TRAINOR. I am Richard H. Trainor, deputy director of the department of public works for Baltimore City. I have been in that job about 4 years.

My education, I have a bachelor of science and bachelor of mechanical engineering, mechanical and civil engineering from Johns Hopkins, and I have done some graduate work in environmental engineering.

Ms. MIKULSKI. Would you introduce the gentleman with you?

Mr. PEROLIKAKIS. I am George G. Perolikakis, head of the bureau of highways, hazardous waste. As of March 1, 1982, I have assumed

the responsibilities of planning and monitoring all landfills in the city of Baltimore.

I have a BS in civil engineering from the University of Rhode Island, and I have an MS from Johns Hopkins University in environmental engineering.

Ms. MIKULSKI. Would you then proceed with any testimony you wish to offer to the committee.

Mr. TRAINOR. All right. The Monument Street landfill, as was testified by the community, was opened in the early seventies, 1973. It had formerly been a brickyard and had been used for mining clay used in the manufacture of brick. The permits were issued and the landfill was constructed. There were monitoring wells installed around the perimeter of the landfill and a leachate collection system installed on top of the clay liner.

From our records and the State's records, in March 1980 the State department of health and mental hygiene inspected the site and found some drums in the northeast sector of the landfill.

Ms. MIKULSKI. Excuse me. There was a little distracting noise in the back, Mr. Trainor. Would you say the data again, please?

Mr. TRAINOR. March 5, 1980. That was in the area that was then being operated and filled, the northeast sector of the landfill. There were some drums found. The State issued a formal complaint and the city went in and made some further excavations. These revealed additional drums in that same area, most of which had been crushed.

The State officials—those that had not been crushed and those that had been crushed, the area around them was sampled and they ran tests. Some of the full drums that had some residue in them or whatever, they were not full but they were intact—were ordered to remove those. And the State then conducted tests on the leachate in that area of the landfill.

Their records indicate that the leachate was not a problem, that there were no unusual quantities of pollutants and we were directed to put better security on the landfill and to not accept drums under except what was then our policy.

If both ends of the drum were cut out we accepted them, from our own departments. Beyond that, the landfill was closed, cover material was placed over it.

Since I have been involved, in the last year or so, we have connected a leachate collection system to the sanitary sewer permanently. We had that on temporary connection for a while, but that has been permanently connected. We have graded the site with the cover material.

There was an incident that was mentioned where we were getting the cover material from the Fort McHenry tunnel excavation. And we became aware, there again through the State health department, that there were some chrome tailings in the cover material. We of course stopped hauling material, met with State officials, and they suggested we either remove the material to a hazardous waste site or that we cover it. We optioned to remove it.

Under their direction we removed the material that had been placed on top that showed traces of chrome material to the Solley Road and also to the port administration facility. We then put cover material over the top, which was the other option.

Since then, except for maintenance of the landfill, every time it rains—there is no growth on it, it is about 27 acres all graded the same way—so when we have a rain there is some soil erosion. We have regraded it and attempted to put a berm up to keep that water from rushing over the edge and washing out the east end of the landfill.

Since then we have been working with the State and Federal officials to attempt to resolve whatever problems there are. I might say that we test the leachate, we test the monitoring wells, there are three, and we judge them against drinking water standards. We have found no problem from the State and city health department tests.

The State has split samples with us. The Federal Government has split samples with the State. There is no indication of a problem with the ground water. The leachate is what would be typical leachate from a sanitary landfill. There are no alarming chemicals in the leachate either at this point and none have shown up to date.

I will answer any questions you may have.

Ms. MIKULSKI. Is that it? Did you wish to say anything more?

Mr. PEROLIKAKIS. No, ma'am.

Ms. MIKULSKI. I would like to come back to this issue of the drums identified on or about March 1980.

Mr. TRAINOR. Yes, ma'am.

Ms. MIKULSKI. Were those drums disposed of at the landfill legally or illegally?

Mr. TRAINOR. Illegally.

Ms. MIKULSKI. So that you did not know that they were being dumped?

When I say you, when I use the term——

Mr. TRAINOR. Indications are, Congresswoman, that they were brought in at night through an arrangement with one of the employees.

Ms. MIKULSKI. I see. You found the drums by what—the State health department found them?

Mr. TRAINOR. The State health department found them. They went to the site and inspected it and then gave us what they call a site complaint, which indicated the presence of the drums.

Ms. MIKULSKI. Then those drums were either crushed——

Mr. TRAINOR. The bulk of them had been crushed. The State ordered us to make an inspection of the site with them. We went out in cooperation with them and dug some test holes and dug further in the area where the drums were exposed.

Ms. MIKULSKI. The drums that are exposed, did you, No. 1, remove them?

Mr. TRAINOR. The ones that were intact were removed. I believe 20 or something like that were removed.

Ms. MIKULSKI. The ones that you removed that were intact, did you then test them for what were the contents of the drums?

Mr. TRAINOR. The State did.

Ms. MIKULSKI. Are you aware of what the contents were?

Mr. TRAINOR. Some of the contents were hazardous. There were maintenance thinners. There was one that had sludge material

that was similar to the sludge that came from the barrel recovery plant, recycling plant.

Ms. MIKULSKI. You found this out in 1980; is that correct?

Mr. TRAINOR. Yes, ma'am.

Ms. MIKULSKI. In addition to the samples that you just said that you did, what else did you do about it?

Mr. TRAINOR. Well, we met, I think March 5 was the citation. We went to the site on the 12th with the 'dozer operator and made excavations at the State's direction. Beyond that, the drums that were intact were removed, whatever number that was. The record is not clear on that. They were removed from the site and disposed of at a hazardous waste site. Beyond that the State—we tightened security at the landfill.

Ms. MIKULSKI. Did you identify the employee who obviously engaged in the corrupt practice that allowed illegal or midnight dumping?

Mr. TRAINOR. Indications are, and our records and the city, unfortunately it is not clear, but indications are the employee was disciplined.

Ms. MIKULSKI. What is the nature of the discipline?

Mr. TRAINOR. I would imagine suspension without pay, but I cannot find that in our records.

Ms. MIKULSKI. Do you know who that employee is?

Mr. TRAINOR. No, I do not.

Ms. MIKULSKI. Mr. Trainor, a man allegedly engaged in corrupt practices, you have a landfill you have been operating under certain agreements with the Baltimore City Council, et cetera, that established that landfill in 1973. You are then told no city workers at that site informs superiors all the way up to yourself or Mr. Cooper, or the mayor, that there is something funny going on at Monument Street. You have no idea that hundreds and hundreds of drums are being brought in in the dark of the night, which then raises a question about your operation, I think a very serious question about your, the city's, operation of that landfill. Don't you think?

Mr. TRAINOR. Yes, ma'am.

Ms. MIKULSKI. Then the State tells you that there is something out there. And you go out and you do the tests. You find out that there are hazardous wastes in it, standard hazardous wastes, that it is not ketchup, it is not mayonnaise, it is not molasses, it is hazardous waste. You know that. And you also know it has been crushed.

Then don't you think, what do you think would be appropriate for a municipal manager or municipal authority to do in terms of the landfill and the alleged culprits who engaged in that activity?

Mr. TRAINOR. Unfortunately, from the records we had no proof, I do not think the hauler was prosecuted, to my knowledge. He made a statement to someone of how he was getting rid of this waste. He retracted that later. I do not think he was prosecuted. I know our man was not prosecuted other than the disciplinary action within the civil service system. There was no criminal prosecutions of the hauler or disposer at the site.

Ms. MIKULSKI. Why not?

Mr. TRAINOR. I do not think there was any proof. I do not know. I am only reading from the State records of it. They have a statement from the trucker who hauled it away from the barrel company. He made a statement which he later retracted and said he did not make.

Ms. MIKULSKI. As someone who is a former city official, it would just seem that city government would go to its employees and say, "What do you know happened? How long has this been going on? What do you know about what's going on? Who did this? When do you know they did it?" And then look for the culprits. That was never done.

Mr. TRAINOR. I trust all of that was done but the record does not reflect it. And I am speaking only from the record that I have. I was not involved at that time, unfortunately.

Ms. MIKULSKI. When did you become aware of the Monument Street drums?

Mr. TRAINOR. I guess in 1981.

Ms. MIKULSKI. So this was never brought—you are deputy director by this time?

Mr. TRAINOR. Yes, ma'am, but I did not get involved at that point.

Ms. MIKULSKI. Were either you or the director ever informed of this?

Mr. TRAINOR. Mr. Cooper I take it was informed of it verbally through Mr. Moore.

Ms. MIKULSKI. So Mr. Moore was the highest ranking authority to know of this?

Mr. TRAINOR. At the site, yes, ma'am.

Ms. MIKULSKI. Have you subsequently questioned Mr. Moore about what he did?

Mr. TRAINOR. Yes, I have.

Ms. MIKULSKI. What did he say?

Mr. TRAINOR. He said he solved the problem by working with the State and responding under their direction, just what they asked him to do.

Ms. MIKULSKI. Midnight dumping is a criminal act, Mr. Trainor.

Mr. TRAINOR. Yes, ma'am.

Ms. MIKULSKI. It is a criminal act because of what it does. Many of us who are officials are sworn officers to implement the law, so that your next in command under you I presume in this matter knew that illegal activity had gone on and did not pursue the culprit?

Mr. TRAINOR. This matter was under investigation by the State department of natural resources police.

Ms. MIKULSKI. So they were investigating?

Mr. TRAINOR. They fully investigated and that is how it came to Mr. Moore's attention, through them.

Ms. MIKULSKI. When Mr. Moore said he solved the problem through working with the State, who did he work with?

Mr. TRAINOR. The gentleman who issued the citation to us on the barrels, Stancil I believe his name is.

Ms. MIKULSKI. Did the city of Baltimore go to the community and say something terrible happened?

Mr. TRAINOR. No, ma'am, I do not think the record reflects that we believed something terrible had happened.

Ms. MIKULSKI. What has been the involvement of city government with the community on the Monument Street landfill issue?

Mr. TRAINOR. From its inception?

Ms. MIKULSKI. Yes.

Mr. TRAINOR. Well, the record reflects again that the Monument Street landfill was a very volatile thing. It opened as a general landfill, and there were numerous complaints over the years and incidents at the landfill where the gate was blocked and so forth.

Ms. MIKULSKI. Mr. Trainor, when you use the term "general landfill," that is not a term of art in legislative definitions. What does that mean?

Mr. TRAINOR. It was a general sanitary landfill for use by the city of Baltimore.

Ms. MIKULSKI. So it was to take, was it to take solid waste, bulk trash?

Mr. TAINOR. Solid waste, right.

Ms. MIKULSKI. Garbage, hazardous waste?

Mr. TRAINOR. No hazardous waste.

Ms. MIKULSKI. Your regular routine——

Mr. TRAINOR. It is landfill, solid waste.

Ms. MIKULSKI. Dump, is that correct?

Mr. TRAINOR. We like to call it a sanitary landfill.

Ms. MIKULSKI. I know, but we have to call it a dump.

VOICE. Dump.

Ms. MIKULSKI. No. Everyone will have their right to testify.

Now then, what has been the involvement with the community? You have indicated that they blocked the gates and did not want garbage coming in in this general landfill. But what was the involvement?

Mr. TRAINOR. Well, there were numerous meetings with the community. I do not know what you mean by involvement. I think the community was extremely active. I think the record reflects that in the clipping file.

Ms. MIKULSKI. Did or did not the city of Baltimore, I am going to skip the municipal issues, they are between you and your own local officials and so on—I want to go to the Federal officials—did you or did you not meet with the community on the alleged dumping of illegal hazardous waste in the Monument Street landfill, and what was the nature of those meetings and what did or did not the city—what was the response of city government to the people's request for an investigation?

Mr. TRAINOR. Meetings were held with the community in concern and reaction to the drums that were dumped on the site. What was the rest of it? What was our reaction to that?

Ms. MIKULSKI. Yes; what did you do?

Mr. TRAINOR. We felt it was secure and that no problems existed. So we did not really——

Ms. MIKULSKI. Do you think it is still secure?

Mr. TRAINOR. Yes, ma'am.

Ms. MIKULSKI. You both have more than appropriate professional qualifications to be involved in this activity. Your engineering background, particular additional courses in the field of environ-

mental health. Have you reviewed the literature that is current on landfills of this type?

Mr. TRAINOR. Yes, ma'am.

Ms. MIKULSKI. And you still feel this is secure?

Mr. TRAINOR. Yes, ma'am.

Ms. MIKULSKI. Let me come back to the citizens. Does the city have a standard operating procedure with citizen requests along these lines?

Mr. TRAINOR. I think we try to be responsive, but I do not know what you mean, a standard operating procedure. We go to every meeting we are invited to.

Ms. MIKULSKI. Is part of your direction from your superiors to respond to the community's concerns?

Mr. TRAINOR. Absolutely.

Ms. MIKULSKI. And try to solve the problems?

Mr. TRAINOR. Absolutely.

Ms. MIKULSKI. They have made those requests. Do you think those requests are outrageous, do you think they are reasonable?

Mr. TRAINOR. I personally do not think there is a reason for them, but I do not know, the city administration and mayor has said that he would not object to any further studies.

Ms. MIKULSKI. That takes me to something else raised by the community. They indicated that the mayor was willing to go on and take certain steps. Are you familiar with what the mayor is willing to do?

Mr. TRAINOR. I think the mayor wrote a letter to the community and to the State which said he would not, this is after the controversy where EPA said they would do some further testifying and so forth. And our advice was based on EPA's own documents and this is that this was not called for. He felt if they wanted to do it that we had no objection to it. That was the gist of his letter. I do not have a copy here.

Ms. MIKULSKI. I would like to have a copy of the mayor's letter.

Mr. TRAINOR. Sure. I think you were sent a copy, I am not sure.

Ms. MIKULSKI. No.

Mr. TRAINOR. I will be glad to furnish a copy.

Ms. MIKULSKI. We have a copy of the letter from the mayor to Mr. Eichbaum telling him he liked the way he was handling it. But that was the last correspondence.

Mr. TRAINOR. Yes. Well, this is after that. He decided that he would have no objection to EPA or the State taking whatever tests they felt would be appropriate.

Ms. MIKULSKI. Now one of the things that emerges in this, because I would like to come back to the midnight dumper, is that, now I am quoting from a July 10, 1980, newspaper article about the prosecution——

Mr. PEROLIKAKIS. July 10, you said?

Ms. MIKULSKI. Yes, July 10, Sunday morning.

Mr. PEROLIKAKIS. Thank you.

Ms. MIKULSKI. The State was investigating an organization called American Cooperage & Steel Drum Co. And they were being investigated for being illegal dumpers. Part of what this newspaper article says is that a truck driver told the investigator during the plea bargaining that substances had been taken to the Monument

Street landfill. So that we knew there was the strongest possibility then that we knew that what was dumped was dumped by American Cooperage.

Was that ever followed up by city government? Did city government instruct its appropriate States attorney's office or city solicitor to then follow up on this with American Cooperage.

Mr. PEROLIKAKAS. No, ma'am.

Mr. TRAINOR. Not to my knowledge.

Ms. MIKULSKI. Are you familiar with the American Cooperage case?

Mr. TRAINOR. Just, we have become familiar with it in recent weeks I guess, or months.

Ms. MIKULSKI. But there was no effort to find out what American Cooperage did at the Monument Street landfill? Municipal law enforcement officials did not cooperate——

Mr. TRAINOR. That is correct.

Ms. MIKULSKI [continuing]. With State investigators, saying while you guys are prosecuting him for illegal dumping, would you please find out what they did at Monument Street and tell us. Did you?

Mr. TRAINOR. Well, I think we did. We worked through the State health department and department of natural resources.

Ms. MIKULSKI. You did not get anything out of it? You did not get information, you did not get facts, you did not get prosecution on someone who violated your landfill?

Mr. TRAINOR. We did not.

Ms. MIKULSKI. Why?

Mr. TRAINOR. Not through our own actions.

Ms. MIKULSKI. Why?

Mr. TRAINOR. I cannot speak for Mr. Moore at the time. Indications are in my conversations with him that he felt that the State was handling this adequately and that he would do whatever was requested, which it seems that he did.

Ms. MIKULSKI. Obviously, your presence here means that you have gotten into it. Could you tell me why you were assigned the job that you were? I do not mean from a professional standpoint.

Mr. PEROLIKAKIS. Mr. Moore retired in February 1982, and at that time the decision was made by the director of public works that he will assign the responsibility with my bureau.

Ms. MIKULSKI. Now, your bureau is the bureau of highways?

Mr. PEROLIKAKIS. That is correct.

Ms. MIKULSKI. Are you going to oversee all landfills or just those that might have hazardous——

Mr. PEROLIKAKIS. All landfills.

Ms. MIKULSKI. All landfills operated by the city of Baltimore or private sector—are there any private sector landfills.

Mr. PEROLIKAKIS. Not to my knowledge, not in the city of Baltimore.

Ms. MIKULSKI. That is part of our problem, what else is going on. So this then is your responsibility?

Mr. PEROLIKAKIS. That is correct.

Ms. MIKULSKI. One of the things that runs through here is that you did not know what was going on in your own landfill, and you left it, and this is in no way to criticise Mr. Moore, but you left it to a third-level person to work it out. There was no institution on

your part of criminal proceedings, prosecution, perhaps even getting some type of final settlement that would have not only helped the city but maybe helped pay for cleaning up this mess, that the people who are the dumpers ought to bear the responsibility for the cleanup and not the regular taxpayers. That was not done.

Also, subsequently you have continued to rely upon the State to tell you what the dickens is in your own landfill. They told you about the midnight dumpers. Nobody else told you.

Later on in your testimony, you say that they were the ones who told you about the chrome dumping, is that correct?

Mr. TRAINOR. That is correct.

Ms. MIKULSKI. You did not know that chrome was coming into your own landfill?

Mr. TRAINOR. No, ma'am.

Ms. MIKULSKI. Why not? What kind of tests and monitoring do you do at your own landfill?

Mr. TRAINOR. It was our indication that there was virgin excavated material and it was up to a point but they hit a point where there was chromium.

Ms. MIKULSKI. And then dumped it?

Mr. TRAINOR. Well, some of it was brought here, yes, ma'am.

Ms. MIKULSKI. But they still are the ones who keep on telling you this. Do you do tests?

Mr. TRAINOR. We certainly do. Our State health department tests the monitoring wells and leachate.

Ms. MIKULSKI. They do the tests. Do you do tests?

Mr. TRAINOR. No, ma'am. We run the tests in our laboratories but the State, I mean the health department does the sampling.

Ms. MIKULSKI. Are you concerned about future problems at this landfill because of the crushed drums? In other words, what you are saying is, whatever drums were intact you have already pulled out so that there are no drums now to be evacuated because they are all crushed in part of the soil substance composition at Monument Street, is that correct?

Mr. TRAINOR. There is no indication of any movement of hazardous materials from the site.

Ms. MIKULSKI. Are there or are there not drums at the Monument Street landfill now?

Mr. TRAINOR. There are.

Ms. MIKULSKI. So you didn't pull them out?

Mr. TRAINOR. I think we removed all that were uncovered that were whole, were intact. But the ones that were crushed were not removed.

Ms. MIKULSKI. How many drums do you estimate are there?

Mr. TRAINOR. The State record is talking about 2 to 500.

Ms. MIKULSKI. How many were evacuated?

Mr. TRAINOR. I think 20 drums were removed that were not crushed.

Ms. MIKULSKI. So there are anywhere from 180 to 480 drums not reported?

Mr. TRAINOR. Or more.

Ms. MIKULSKI. But you did not go in and poke around, is that correct?

Mr. TRAINOR. No; we did what the State directed us to do.

Ms. MIKULSKI. What did the EPA offer to you?

Mr. TRAINOR. They came in at some point in time and split samples with the State and ran tests, again on the monitoring wells and leachate collection system. They sampled the leachate that was being collected.

Ms. MIKULSKI. Did the city, did EPA offer to the city government to investigate the northeast corner?

Mr. TRAINOR. They talked to the State.

Ms. MIKULSKI. They did not talk to you, city government?

Mr. TRAINOR. No. I attended one meeting in the State's office, Mr. Nelson's office, with EPA officials from Annapolis. But I was invited by Mr. Nelson.

Ms. MIKULSKI. What was the nature of that meeting?

Mr. TRAINOR. This was to go into a further investigation of the northeast corner of the site.

Ms. MIKULSKI. When was the meeting?

Mr. TRAINOR. I do not know that date but it has been some months ago.

Ms. MIKULSKI. You have a record you keep quoting from. Is that part of your record?

Mr. TRAINOR. No, this is not my whole record.

Ms. MIKULSKI. You did not bring your whole record?

Mr. TRAINOR. No, ma'am.

Ms. MIKULSKI. Try to remember when it occurred. Was it spring or summer, 1980, 1981? The month and year.

Mr. TRAINOR. I think it was earlier this year, January or February.

Ms. MIKULSKI. January or February. In Annapolis?

Mr. TRAINOR. No. It was in Mr. Nelson's office at the State office building.

Ms. MIKULSKI. Who was present at the meeting?

Mr. TRAINOR. I was there, Mr. Perolikakis from the city, then Mr. Nelson, Mr. William Chicca and two gentlemen from Annapolis from EPA.

Ms. MIKULSKI. Who is Mr. Chicca?

Mr. TRAINOR. He works with Mr. Nelson.

Ms. MIKULSKI. What was the content of the meeting?

Mr. TRAINOR. This was a request of EPA by the State to do some further tests at the landfill.

Ms. MIKULSKI. What was the nature of the discussion? Who said what?

Mr. TRAINOR. Well, this goes back to the commitment or verbal statement that further investigation by EPA would be done.

These gentlemen, and I do not remember either of their names, from Annapolis mentioned how they would take soil samples and so forth. The State was opposed to it and we were opposed to it based upon the facts that we had before us.

Ms. MIKULSKI. So you opposed it. Why did you oppose it?

Mr. TRAINOR. Because I think from all I know it is something you do not do unless there is some indication that it is necessary.

Ms. MIKULSKI. But why did you oppose it? Would it do harm?

Mr. TRAINOR. It could very well, yes.

Ms. MIKULSKI. Why?

Mr. TRAINOR. Well, there is a danger of just digging around in a landfill, and beyond that, the possibility of puncturing a liner or doing some other problem. In other words, the leachate we were collecting showed no indication of a problem.

Ms. MIKULSKI. Let me backtrack.

There are a number of drums unaccounted for. They are in containers, containers deteriorate. Am I safe in saying containers deteriorate?

Mr. TRAINOR. Yes, ma'am.

Ms. MIKULSKI. So we know there is hazardous and toxic waste in containers that may have been crushed into the soil. Are we going to wait until something terrible happens?

Mr. TRAINOR. Well, the terrible thing that would happen——

Ms. MIKULSKI. In other words you are saying, don't do the test because there is this water that you have compared to drinking water standards; so you are saying there is no need. Then you are also saying there is a danger to puncturing it. But time will puncture the drums. Corrosive nature of hazardous and toxic waste will puncture the drums. Every second that stuff is eating away at the lining of those drums.

We know that if it is not today, sometime in the future they are going to leak. Then what are we going to do? Are we going to wait until the water is contaminated and not take preventive measures now? Are we going to wait until there is an actual imminent danger based on that?

Mr. TRAINOR. First, most of the drums were crushed. The indications would be that the—any flood from there or any ground water that goes through that material would go to the leachate and we collect the leachate and sample it. So there has been no movement of hazardous materials through the leachate collection system.

Ms. MIKULSKI. Under your reasoning, Mr. Trainor, then, you can never clean up a landfill and there is never any reason to clean up a landfill.

Mr. TRAINOR. No; I think if you have a landfill, with a leachate collection system and the leachate does not show toxic or hazardous materials at any undue level, then you can be comfortable with it if the landfill is completely covered.

Ms. MIKULSKI. Did you want to say something?

Mr. PEROLIKAKIS. Yes.

For the record, on March 10, 1980, I have a report here from Paul Stancil, he represented the water resources department, he mentioned the drums and all the investigations that took place. All of the drums found were damaged severely and most waste chemicals have leaked out or are leaking out. An attempt to recover any drums will not be advised since at least 95 percent have been crushed by roller traffic.

I would be more than glad to give you a copy of this.

Mr. TRAINOR. I think that really is in response to what you mentioned as far as a time bomb or something like that. I would agree with you if we had hundreds of drums that were depending on the drum to contain the material.

Ms. MIKULSKI. But you don't know whether you do or you don't.

Mr. TRAINOR. Well, we know that many were crushed.

Ms. MIKULSKI. But you don't know how many are there. You have no inventory of the drums. Do you have an inventory?

Mr. TRAINOR. Of course not.

Ms. MIKULSKI. Because it was a thug who came in and did it.

Well, just to summarize this line of questioning, you are saying there is something out there. You are not sure what it is, but not to worry about it. Is that right?

Mr. TRAINOR. When did I stop beating my wife?

Ms. MIKULSKI. I hope you have.

Mr. TRAINOR. Not yet.

No, our feeling in sincerity now is that a problem would first show up in the collection system. We have a leachate system. It would first show up there. We are continuing to monitor that. The State monitors it. If it shows up, it goes into the sanitary sewer and it is treated at Back River. It has not shown up.

Ms. MIKULSKI. What you are saying though is that it has not shown up and you do not want to do anything else about it, is that correct?

Mr. TRAINOR. No, I want to keep monitoring the leachate and keep monitoring the wells.

Ms. MIKULSKI. One final set of concerns here.

What I find so fascinating is that chromium was used, is that correct?

Mr. TRAINOR. The bulk of it was removed and then we covered it.

Ms. MIKULSKI. How much is left?

Mr. TRAINOR. Traces may be left. We again worked with the State and removed all that was visible.

Ms. MIKULSKI. What else has the State required you to do on chrome?

Mr. TRAINOR. They gave us an option when it first showed up there. Under, it wasn't all chrome, there was some visible, to remove it or cover it. We attempted to remove all that was visible and then we covered it also.

Ms. MIKULSKI. You covered it with what?

Mr. TRAINOR. Other soil materials.

Ms. MIKULSKI. So chrome is still sitting there?

Mr. TRAINOR. Not to my knowledge. There may be traces of it.

Ms. MIKULSKI. You covered what is visible, you removed what is visible?

Mr. TRAINOR. Yes, we dug down through the cover that had been placed from the Fort McHenry tunnel and then removed all that material that was visible.

Ms. MIKULSKI. Who gave that approval for that material to go there?

Mr. TRAINOR. I did, or through me.

Ms. MIKULSKI. Are there normal samples?

I want to go back to the private sector and what we require for a minimum.

Mr. TRAINOR. Yes, ma'am.

Ms. MIKULSKI. If you were the Humperdink Landfill Corp., and you were accepting materials, the requirements are that any one accepting materials needs to know what that material is, through soil testing, whatever scientific methodology is used, did you require that?

Mr. TRAINOR. We looked at the material that would be used, yes, ma'am. And it was, you know, the material we started to use for this cover was fine. As they excavated they got into a layer of chrome that had been placed there some years ago.

Ms. MIKULSKI. Was that harbor dredging?

Mr. TRAINOR. No, ma'am. It was from the lower Canton Acre on the fast land.

Mr. TRAINOR. Before they broke the dike for the tunnel, it was the major excavation on the Eastern Shore side.

Ms. MIKULSKI. I see. So when they broke that, then, did you or any other official go to the site of where the chrome tailings were coming from to see whether there was any chrome leaking into the Chesapeake Bay or harbor caused by our own excavation for I-95?

Mr. TRAINOR. Yes, ma'am. Understand, when we approved it there were no chrome tailings.

Ms. MIKULSKI. I understand that.

Mr. TRAINOR. As they got down some distance, they got into a pretty heavy load of chrome tailings. They stopped work immediately. From there it was contained. There were sediment ponds put in to collect the water that came off of it. It was all removed to a hazardous waste site.

You forget the total tonnage but it cost a billion or million and a half dollars. It was a major problem.

Ms. MIKULSKI. Excavation?

Mr. TRAINOR. Yes, ma'am.

Ms. MIKULSKI. We could do it right.

Mr. TRAINOR. Sure we could. We tried to.

Ms. MIKULSKI. So this is land abutting water where we are doing a major engineering project?

Mr. TRAINOR. Yes.

Ms. MIKULSKI. But we could excavate?

Mr. TRAINOR. Sure.

Ms. MIKULSKI. So really if we could excavate there we could probably excavate anywhere?

Mr. TRAINOR. Oh, yes.

Ms. MIKULSKI. Mr. Trainor, I have no further questions. I would like to thank you and your associate.

Mr. TRAINOR. Thank you.

Ms. MIKULSKI. I do have other questions, but it is now 11:30 and I think we have a picture of it. I think there are some very serious operational procedures, operational problems at the Monument Street landfill.

Now I would like to call Mr. Hugh Kaufman.

## STATEMENT OF HUGH B. KAUFMAN, WASHINGTON, D.C.

Mr. KAUFMAN. My name is Hugh B. Kaufman, and I am not here as a representative of the Reagan administration——

Ms. MIKULSKI. Mr. Kaufman, I would like you to tell me your name.

Mr. KAUFMAN. Yes, I just have to tell you these things first. My boss requires that of me before I say anything else.

Ms. MIKULSKI. I have a letter from your boss. I would like you to identify yourself in the way that we will have uniformity in the hearing.

I have here a letter form Rita Lavelle which I will enter into the record, disclaiming EPA's, your—you as an official EPA spokesman.

Mr. KAUFMAN. I have a bachelor's and master's degree in engineering administration. For 4 years I was an Air Force officer and I joined EPA at its inception. I joined the Office of Solid Waste as a special assistant to the Director of that office around 1972.

In 1975 I became Program Manager of the damage assessment program, which is the program that investigated and cataloged damages from hazardous waste facilities all over the United States. In that program we also did ground water studies documenting movement of contamination from hazardous wasteland disposal facilities offsite.

In 1980 I was with the superfund program which discovers and investigates hazardous waste facilities and provides money contributed by industry and the taxpayers to ameliorate these problems. I am presently employed in that capacity as the Assistant to the Director of the Hazardous Site Control Division.

Ms. MIKULSKI. Mr. Kaufman, for the record I have here an undated letter from Rita Lavelle informing me that you were not the official spokesman for EPA at this hearing, that Mr. Peter Bibko is to act as EPA's official representative. I did not need this letter because I did not invite you as an official spokesman of EPA when I issued that invitation.

I know you have often functioned as a private citizen volunteering your own time in that area, working with citizens groups, is that correct?

Mr. KAUFMAN. Yes, ma'am.

Since my name started to get bandied around the press 4 or 5 years ago, prior to and of course after the Love Canal situation, and because citizens all over the country have been having a very difficult time not just in Baltimore but all over getting the Government at all levels to address their problems, I find that I get phone calls as a court of last resort, as you described.

Though certainly I cannot solve everyone's problems, at least I try to make the effort when I can to aim people in the right direction and try to provide them technical assistance so they can fight their battles armed with a little more technical knowledge.

[The letter referred to by Ms. Mikulski follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Honorable Barbara A. Mikulski
House of Representatives
Washington, D.C. 20515

Dear Ms. Mikulski:

Your invitation to Mr. Hugh Kaufman an employee within the Office of Solid Waste and Emergency Response to appear before your Subcommittee at the May 15 hazardous waste hearing in Baltimore has just come to my attention.

You and I have been working together harmoniously and effectively on our mutual waste disposal problems, and I am eager to assist in every way possible to make your hearing a success. I have so instructed my staff.

You will, however, appreciate the extreme care which the Agency must exercise to avoid misrepresentation and misinformation which often creep into this high-visibility arena. There is far too much of both, and each additional increment adds to uncertainty and refuels citizens' fears.

EPA must accordingly be most judicious in selection of our official spokesmen. I am therefore asking the Agency's Region III Administrator, Mr. Peter N. Bibko, to act as EPA's representative at the hearing. Mr. Bibko, already a member of one of your hearing panels, is being asked to furnish you with official agency testimony as you desire. He will also provide any technical backup necessary to provide a full airing of the facts.

Mr. Kaufman's appearance of behalf of the Agency is not appropriate. It has been two years since he was active in the Resource Conservation and Recovery Program. He is not an agency expert on either the program or the three sites specifically mentioned in your letter. His current assignment with our Superfund program in no way equips him to add any additional information which can be supplied by Mr. Bibko on the matters your hearing will consider.

Mr. Kaufman is free, of course, to appear as a private citizen. By a copy of this letter, I am so advising him.

I wish you much success with the hearing. You may be sure Mr. Bibko will help in any way he can to ensure an accurate assessment of the problems involved and to arrive at the feasible guidance we both seek.

With kind personal regards,

Sincerely,

Rita M. Lavelle
Assistant Administrator
for Solid Waste and Emergency Response

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Ms. MIKULSKI. Mr. Kaufman, I do not know your home address so when I invited you exactly for those reasons to come and testify, benefit from your experience, I sent it to your office.

When did you receive that letter?

Mr. KAUFMAN. I never received it.

Ms. MIKULSKI. You never received it?

Mr. KAUFMAN. No, ma'am.

Ms. MIKULSKI. Is it the habit of EPA to commandeer correspondence addressed to its staff?

Mr. KAUFMAN. No.

Ms. MIKULSKI. Mr. Kaufman, does EPA commandeer your mail?

Mr. KAUFMAN. At times, yes.

Ms. MIKULSKI. Does it open your mail?

Mr. KAUFMAN. At times, yes.

Ms. MIKULSKI. Does it do that with any other employees?

Mr. KAUFMAN. Not to my knowledge.

Ms. MIKULSKI. So you have never received my invitation to you?

Mr. KAUFMAN. No, ma'am.

Ms. MIKULSKI. That letter then was commandeered by EPA, obviously opened.

Mr. KAUFMAN. That is correct.

Ms. MIKULSKI. We got this response.

Mr. KAUFMAN. I received a copy of that response yesterday afternoon.

Ms. MIKULSKI. Fine.

Mr. Kaufman, has it been the practice of EPA to in any way infringe upon your basic civil liberties as an American citizen in terms of monitoring your right to privacy, free speech, publishing?

Mr. KAUFMAN. Not prior to this administration.

Ms. MIKULSKI. Has it been currently?

Mr. KAUFMAN. Yes, ma'am.

Ms. MIKULSKI. It is not within the scope of this hearing to pursue that particular line. However, it is the duty of any Member of Congress to insure that the civil liberties of any American are protected. I would like to have from you an outline in the way that you think your civil liberties have been violated and we will pursue that in another hearing.

Would you like to tell us then what has been your role in the Monument Street situation.

Mr. KAUFMAN. Yes, ma'am. I would have to go back a little bit in history a few years ago when Michael Brown was writing the book "Laying Waste: the Poisoning of America." Mr. Brown is the reporter who covered the Love Canal situation and documented hundreds of hazardous waste tracts around the United States.

In that book he gave the telephone number of a citizens advisory group in Niagara Falls, where citizens who are getting no help can call and at least be put in touch with other people who could help them in fighting their battles to protect the air and water from hazardous wastes.

In this particular case, Mrs. Muldowney had called that telephone number that was in Michael Brown's book. The person at the other end, Mrs. Joan Gypp, a city councilwoman in the Niagara Frontier area, has, much like yourself as a matter of fact, been very tenacious in trying to force Government to do its job——

Ms. MIKULSKI. Personal observations can be left aside.

Mr. KAUFMAN. In any event, Mrs. Gypp gave Mrs. Muldowney my name and the name of an attorney locally that she could speak to that might at least give her some help in trying to get help for herself.

It was within these auspices that I believe about a year ago myself and Graham Wisner and another attorney, Scott Schwartz, had come on a weekend to Baltimore to sit down with Mrs. Muldowney and discuss the situation and see if there was a way we could, with the information she had, aim her to carry out her battles of getting that site investigated and getting straight answers and, hopefully, protection that they felt they were not getting.

I have been doing these type cases everywhere, so the specification of this particular case, who shot John on what date, I am not very familiar with. However, it was my feeling in listening to Mrs. Muldowney that they were not being given totally straight answers as to the magnitude of the problem there.

I felt that there was not enough investigation that could easily be done that could either put the issue to rest or show further magnitude of the problem, if there is a problem. That type of work was not being done and the issue, I felt, was being shunted aside by the State and local government.

I tried to provide information in basic technical terms in what they had to deal with, issues like aquifers, leachate collection systems, and I went through all these technical issues with them to help them better arm themselves in dealing with the issue of the landfill and hazardous wastes.

Ms. MIKULSKI. What were your observations and findings there?

Mr. KAUFMAN. My observation was that I did not feel from a technical point of view that the monitoring presently in place necessarily would be good enough as an early warning system for contamination moving offsite. I would have liked to have seen some third party geologists look at the monitoring system, leachate control system, look at some soil borings around the area to see if the system is set up in such a way that it would pick up problems of movement offsite if it was happening.

The second thing that I felt uncomfortable about was how much hazardous waste and what type is in the landfill. Again, I cannot remember specifications but in going through the documentation that I had seen, I felt that the citizens were first told there is no hazardous waste; then well, maybe there was a little bit of hazardous waste and yes, maybe there are 2 to 500 drums. But everything is "guesstimates."

The more the citizens pushed, the more the guesstimates changed. So I feel we still do not know what is really in that landfill.

EPA uses investigative techniques such as a photo imagery where we go through historical graphs of the United States including this landfill. And we could get a profile just looking back in 1972, 1973, 1974, 1975 of photos to see, get an idea of what kind of barrels might be in there.

That is one of the investigative tools we use. That aims us in looking where we could take samples in the fill. We have these techniques. I am not the world's greatest expert in photo imagery

or any of these others. I am just aware of them because in managing these kinds of investigations, I get the experts to work on that.

These techniques can be used at Monument Street. It was my feeling that EPA's Annapolis Laboratory had agreed to try and help these people with this and were pushed away by the State and local officials.

Ms. MIKULSKI. Mr. Kaufman, has your experience with Monument Street landfill and other landfills, other similar situations around the country, helped you identify about what is needed from the various levels of government, Federal, State, local, and the community level?

Mr. KAUFMAN. It is clear to me that—these are policy points of view and State and local citizens who live anywhere near hazardous waste and hazardous waste facilities, because of the loopholes of our hazardous waste regulations, and they do not get the level of concern from government officials at any level commensurate with the concerns, and legitimate concerns that they have.

Consequently, relations between government officials responsible for protecting their health and the citizens keeps getting worse and worse as each year goes by. In some cases I feel the citizens have legitimate concerns. In other cases they may be wrong. But nobody treats them with dignity. And I think if we look at one word, it is human dignity. These people who live near these facilities pay taxes and are treated just as rotten as the garbage that goes into the facilities near them. And they are not treated with dignity.

By lying to them, by calling them unsophisticated, by calling them names, there is no way these people are going to believe you when you say everything is safe, don't worry.

Ms. MIKULSKI. Mr. Kaufman, in our hearings in Washington, in which you also participated, there seems to be a national pattern of citizen disregard. And that in some way we see the citizens as the enemy rather than treating the toxic waste and illegal dumpers as the enemy.

I have been concerned about this persistent pattern throughout the country of this citizen disregard. I keep raising the question, as I did with the Monument Street people, should there be at EPA some type of point of last resort that the constituents would go to, some type of ombudsman.

Mr. KAUFMAN. Yes. If there was an institutional mechanism for a citizen to plug in where there are certain constraints on the individuals they are plugging into to make sure they also don't become institutional liars, I think it could only help.

I am a little concerned about it because I have seen EPA be used for political purposes perhaps more so in this administration than any other, to give clean bills of health.

There would have to be some constraints on that ombudsman's office, and checks and balances to be sure it is not used to pat the masses on top of the head.

Ms. MIKULSKI. You are aware that within the structure of EPA now exists a framework for something called toxic assistance panels, are you aware of that?

Mr. KAUFMAN. Yes, ma'am.

Ms. MIKULSKI. Do you think they could be used in a way for citizens' response?

Mr. KAUFMAN. Yes, ma'am, I think we could use many of the mechanisms we handle to support industry, we could use pieces of those to support citizens.

Ms. MIKULSKI. What we have done in the procedures through the House of Representatives rather than trying to create another bureaucracy to deal with the bureaucracy, to try to find internally what are some of those mechanisms.

We are searching for those. I would like you to think about them and any recommendations you may have.

Mr. Fortuna, did you have some technical questions you would like to address to Mr. Kaufman?

Mr. FORTUNA. Just a few.

Mr. Kaufman, you heard the previous witnesses relate that leachate that is being collected at Monument Street shows nothing unusual or nothing toxic in any significant level. You have had, I think, a chance to examine some of the materials presented by the agency at the subcommittee's last hearing.

The information provided by EPA shows a broad diversity of organic substances, some in appreciable quantities. Is it your opinion that finding such a broad diversity of substances in the leachate collection system is "normal leachate" from a sanitary landfill?

Mr. KAUFMAN. Based on my experience and experience of other technical people within EPA, because this has come up in other landfills, not just this one, when you get as broad a spectrum as that you suspect that there may be industrial waste in a landfill of that type, also.

Mr. FORTUNA. I note for the record we are finding substantial concentrations of xylene, xylene isomers, things that are normally industrial solvents.

Not to say they can't appear in consumer products of some sort but nevertheless in rather substantial concentrations for a leachate collection system. You were present at the last hearing when the subcommittee had several independent research groups discuss the general integrity of landfills and whether or not there is such a thing as a secure landfill and whether they can be engineered and designed in a way so as to prevent leakage.

The Office of Technology Assessment and Princeton University both testified. Could you briefly summarize their testimony?

Mr. KAUFMAN. Well, basically, the testimony that you were provided by these two technical groups was their independent study showing that landfills leak. In the Princeton study in particular, they looked at five of the most secure landfills and found that they are leaking. This confirms studies we did at EPA back in the late seventies.

It confirms studies done by everybody including the Chemical Manufacturers Association.

Mr. FORTUNA. These were sites with dual liners, were they not?

Mr. KAUFMAN. Double liners, leachate collection systems, good clay soil. These are leaking.

Mr. FORTUNA. Monument Street has what?

Mr. KAUFMAN. Monument Street supposedly has some clay underneath it. That is what it says. I have not seen a good detailed geological data that documents that.

Mr. FORTUNA. It is a dual liner, do you know?

Mr. KAUFMAN. Not to my knowledge.

Mr. FORTUNA. Is it not true EPA itself on February 5, 1981, said in the Federal Register that all landfills will leak at one time or another.

Mr. KAUFMAN. Exactly, depending on the design. It may take 10 years, it may take 30 years, but they all leak, and we have to develop a regulatory program that takes that into account.

This is the first that I have heard any engineer working in the field that has ever claimed that they have a landfill that doesn't leak.

Mr. FORTUNA. One last question.

It has been noted by the previous panel and from looking at the information submitted by EPA that a number of the substances are present in rather low levels; low parts per million, some of them in low parts per billion.

Can we take any solace from the fact these are only part per billion ranges right now, and will remain that way forever?

Mr. KAUFMAN. Obviously not. We don't know enough about what is in that landfill. The previous witness pretty much admitted that they really don't know the full parameters of what is in that fill.

Things could be clean, and one day, just get out of hand. I am thinking of Tennessee, where there was a landfill 1½ miles away from homes that was not causing problems for a number of years.

Then, all of a sudden, the water contamination level that the people were drinking went up sharply. Obviously these people in Monument Street don't have that kind of concern because they are not getting water, ground water from that particular area.

They do have underlying streams underneath the area. If you get heavy rainfall, you may have problems with basements flooding. If there is contamination there, they may have problems within their basements. I think the important thing is to prevent damage.

Once you try to clean it up, you can't do it. In Love Canal, if those wastes had been properly contained or handled properly, it would have cost $1 million. Now that they have started major escape, I think we have spent $50 or $60 million and we still haven't cleaned it up.

Today, right now, organic chemicals are still pouring into the basements and some of these tanker trucks can't pull the chemical out of the basements fast enough. In other words, with all the remedial actions we are doing at Love Canal, in some parts of the canal it is getting worse.

So we have to view this as prevention if there are hazardous wastes at a site, we want to know the dimensions of it, and want to do the best we can to contain it for 10, 20, 30 years.

Mr. FORTUNA. Based upon your previous investigations and knowing that there is a certain level, but yet unspecified amount of wastes disposed of at the site, and based upon what you have been able to see from the leachate collection systems coming out, would it not be reasonable to assume that there is at least a potential problem of sizable magnitude?

Mr. KAUFMAN. It is clear to me there is hazardous waste material at the site, and may be a lot of it. As to how much, I think there are technical mechanisms of gathering that data of photoimagery and gathering samples at the site.

It has been done before all over the country. It can be done here. One of the technical gentlemen, Mr. Villa, of EPA, offered to provide that type of help. He was shunted aside. I hope he is not being harassed for his standing up and being aggressive. Perhaps this committee can get this situation back online.

But you are getting to a national issue. Since I am not speaking for the agency I can say it. So long as an administration does not want to appropriate resources to help citizens, resources Congress has appropriated to do jobs that Congress has written laws that the administration is supposed to follow, so long as they don't do that, they don't spend that money, don't help citizens, we are nowhere, because EPA is the court of last resort.

Ms. MIKULSKI. So what you are saying, Mr. Kaufman, is that Congress has passed the laws.

Mr. KAUFMAN. That is right.

Ms. MIKULSKI. It has authorized appropriate funds.

Mr. KAUFMAN. To be used to help people, right.

Ms. MIKULSKI. It has appropriated those funds?

Mr. KAUFMAN. That is correct.

Ms. MIKULSKI. But the agency has chosen not to expend the funds Congress has so designated for this particular use? Is that correct?

Mr. KAUFMAN. That is correct.

They basically set up redtape systems that eat up resources as opposed to using the money to help citizens.

Ms. MIKULSKI. Mr. Kaufman, we could talk with you all afternoon. It looks like we are heading that way if I don't bring this to a close. I would like to thank you for your testimony, and for your being a resource to citizens. If there are additional comments you would like to make, we would welcome them.

Mr. KAUFMAN. If I may, I would like to thank you, Congresswoman, because it is very difficult for citizens to get even their own local Congressman to help.

I think it is admirable on your part to have a hearing here and give them a chance to get to Washington this way. Thank you.

Ms. MIKULSKI. That concludes really, primarily, the story on Monument Street, though there are definite questions to be asked the State and EPA. It is the Chair's intention to keep on working and not to break for lunch.

We will move to listening to the citizens next, from Curtis Bay and we will then deal with the American Recovery issue.

Subsequent to that, we will then go to Hawkins Point which we anticipate to conclude prior to 1:30. Then to the Chesapeake Bay Foundation and then to State and Federal officials.

[Brief recess.]

Ms. MIKULSKI. The Chair would like to reconvene the hearing. We ought to resume our testimony. The Chair wishes, however, to acknowledge the presence of Senator Cornell Dipsky, who represents the south and southeast area of Baltimore.

He has also been expressing an interest in particularly the Monument Street landfill.

We wish now to move to the Curtis Bay Improvement Association. Would the Curtis Bay Improvement Association please take the stand?

**STATEMENTS OF GLORIA SIPES, VICE PRESIDENT, AND ROBERT E. SMITH, JR., PRESIDENT, CURTIS BAY IMPROVEMENT ASSOCIATION**

Ms. SIPES. Good morning, Madam Chairman.

Ms. MIKULSKI. The Chair wishes to welcome the Curtis Bay Improvement Association, acknowledges the long-standing contact we have had on issues of environmental concern to your community. For the record, we wish the Curtis Bay Improvement Association to identify itself in terms of its name, purpose, community activities, general goals as we asked Monument Street.

Ms. SIPES. My name is Gloria Sipes. I am vice president of Curtis Bay Improvement Association. I will let Mr. Smith tell you about the organization.

Ms. MIKULSKI. Mr. Smith.

Mr. SMITH. My name is Robert E. Smith, Jr., and I am president of the Curtis Bay Improvement Association. I have been since November of 1981. I have been active in the community association for at least the last 3½ years. I have been a resident of Curtis Bay for that last 8 years, a resident of Brooklyn, which is adjacent to Curtis Bay, for the rest of my life, prior life, rather. Probably be stuck here the rest of my life, also.

As far as the association is concerned, it has been in existence in excess of 21 years mainly under the direction of past president Benjamin Poe, who had to retire because of his health.

He gave me the awesome task, or the community did give me the awesome task of taking over his footsteps, the fine job that he had done. If it wasn't for the community association and Curtis Bay, matters that we have at hand or matters with industry over the years would have run more rampant than have been running.

Primarily, our problems in Curtis Bay are with the industrial neighbors that are directly adjacent to us, not something that is 6 blocks away, 6 miles away. We live next door. My building where I reside is in M-3 zoning, which is the heaviest industrial zoning in Baltimore City.

So, one of my immediate neighbors is American Recovery.

Ms. MIKULSKI. Could you, however, elaborate in addition to your industrial environmental concerns what other activities, community activities does the Curtis Bay Improvement Association participate in, or is this your sole area of activity?

Mr. SMITH. Primarily it takes up our agenda through the past years that I have been associated with the community association. In lieu of the zoning ordinance, enforcement or cleanup of the areas, but primarily our topic every meeting is the industrial neighbors that we have.

Ms. MIKULSKI. Do you do Little League or anything else?

Mr. SMITH. No, we don't do Little League.

Ms. MIKULSKI. Those are done by other organizations?

Mr. SMITH. Other organizations. Senior citizens have a very active association as well as the church-affiliated groups. But as far as the Curtis Bay Improvement Association, it is directed strictly for the community.

Ms. MIKULSKI. One last question, and then we will move on.

Mr. Smith, how long did you say the Curtis Bay Improvement Association was in existence?

Mr. SMITH. In excess of 21 years.

Ms. MIKULSKI. So it has just not come to some of these issues.

Mr. SMITH. Yes.

Ms. MIKULSKI. I would like now for you to proceed in any way you wish. Let me just tell you some of the concerns that I have. I would like to know what concerns brought you to this, how did you begin, who did you go to and what was the response?

I have, of course, your correspondence to me, reviewed the record, made field visits to you. Proceed in any way you wish.

Ms. SIPES. Basically, I would like to say we are not against industry and we realize there is a need for facilities such as this. At the same time, we feel if they are going to put them in your area they should be set up properly in the first place.

It seems to me when American Recovery was first started, nobody cared. They just put it in there and that was it. Then in 1980, they had an explosion, and they still gave them a permit. I attended the open hearing in 1980 on the hazardous waste permit, and they granted them the permit 6 days after another explosion.

Nobody knew what caused the explosion. They never once closed them down. They let them operate continuously. Two men were injured. EPA doesn't even know about the fire or explosion unless somebody calls them and tells them.

I just don't understand how they are permitted to do this. This is not the first time. This is not the only noncompliance. Over the years, if you go through their records, you could write a book. That is, if you could read their records properly at the EPA, which are kept in deplorable condition.

Ms. MIKULSKI. Are you talking about EPA or the State of Maryland?

Ms. SIPES. The State EPA on Preston Street. It was in Annapolis at one time. They keep violations in one section, this permit there. You have run all over the building to find out what to find. At times, I feel like it is a coverup to keep you from finding out what is going on. Nobody wants to tell you anything. I took a tour of the plant in September 1981.

They had drums that were leaking. They had drums sitting all over the ground. Nothing under them. They had drums that were smoking from the top. We took a tour of the building, the third floor where the building was blown out. They had hazardous waste drums up there covered with plastic.

They said the reason they covered them with plastic was they didn't want water to hit them. Yet, all three sides of the building were blown out at the top. If it rains real hard the rain would blow in, settle on the floor. There was no way you were going to keep the water out of the drums, the drums from standing in the water.

They had men working right there opening drums, testing, whatever they call it. Still, the open space above them, if it was raining, there is no way the water couldn't come in there and hit the drums.

They tell you that it is dangerous. They don't know what will happen when they mix chemicals and water. Yet they still permit it to operate with the building open like that. They had pipes run-

ning all over the place, patched up, looked like with Scotch tape. Every question you asked them they would tell you, why, it is just plain water.

I mean, that doesn't make sense to me that plain water is leaking all over the place. Certainly, it must be washing out something, taking care of some of their processes. That is about it as far as I know. I understand they have been fined $40,000, but will they have to pay the fine or will it just drag out to the point where it will just be forgotten?

I see no record any place else that they have ever been fined. They have never been closed down or anything. It seems like to me when you are operating with hazardous wastes that, if you had an explosion and don't know what causes it, it would seem to me the first thing you would say, well, satisfies operation until you find out. You have chemical plants within 2 blocks of this place.

If this place ever catches on fire, we wouldn't have to worry about Curtis Bay. But then, maybe that is the whole point.

Ms. MIKULSKI. Mr. Smith, did you want to add to that before we move on to questions?

Mr. SMITH. I have got a lot to add. You are talking about cooperation from both city agencies and State agencies and Federal agencies. I guess our best expertise would be the fact of lack of cooperation with city agencies in helping our plight with numerous problems we have with Curtis Bay regarding hazardous wastes.

Or actually, any, as far as that is concerned. First off, I would have imagined you would have invited our delegates, city councilmen to this meeting. As you can well see, as major a problem as we have here there are no elected representatives from the sixth district here.

Ms. MIKULSKI. I didn't include them. This is a congressional hearing to listen to the citizens.

Mr. SMITH. OK. One of the statements that I have had made and had put in print in the papers are the fact that Curtis Bay, or I should say Baltimore City stops at the Hanover Street Bridge.

I have changed that statement to saying that Baltimore City stops at the South Branch of the Patapsco River, because I would be then including Cherry Hill section of Baltimore City in Baltimore City, because they seem to get an awful lot of response, where we don't get any at all.

By those statements that I have made, Mayor Schaefer's office called me frantically to get an appointment to talk to me and representatives of the community association on the problems that are existing in Curtis Bay.

Anything from the industrial factories, American Recovery, Hawkins Point——

Ms. MIKULSKI. Mr. Smith, I would like you to confine your testimony to, I believe, American Recovery and anything you would like to say in regard to that.

Mr. SMITH. OK. Now, if you want to get back to Hawkins Point, I will start there.

Ms. MIKULSKI. I want to know what are your concerns——

Mr. SMITH. I want to talk about Hawkins Point and the fact of matters not brought before this meeting which includes Glidden Point factory that is down at Hawkins Point that is constantly pol-

luting the water and polluting the air without any resolution whatsoever over past years.

You can drive across Key Bridge and where it is noted on that sign there by Hawkins Point citizens, where the accident was on Key Bridge, there was a cloud of smoke that engulfed the bridge and they had that massive accident. Also, if you drive across the bridge, you will see the pollutants coming out of the area at Glidden that are polluting that area.

I grew up in Brooklyn, so therefore we used to go the different ponds that were located by the Glidden site. They were fresh water ponds. Dumping took place there in such magnitude that it killed off all the fish, fresh water fish that were in those ponds.

Before long, if you go back there, some of those ponds are actually gone. This is by dumping of materials coming out of factories like Glidden. I want to know why a survey wouldn't be taken on those areas for testing for what kind of pollutants are in the ground and covered over into that water which then leaks back into the Chesapeake Bay.

I brought up, at one of the meetings, the ordinance on Pennington Avenue landfill by Jesse Williams Trucking Agency. We were, drums were leaking and spilled over the ground there. I have never gotten any results from those questions as far as what the—John Griffin from the Governor's office was supposed to find out what sort of drums were there, what sort of materials were deposited there and covered over.

There is no evidence of any excavation to find out what drums were there. Now, it is a small area. But it is a case in point of this midnight dumping that you are so interested in or which we are so interested in. Not only you.

Now, also——

Ms. MIKULSKI. What is the name of that landfill again, sir?

Mr. SMITH. That area is at Ordinance and Pennington Avenue. The owner's name is Jesse Williams. It is a trucking firm. The area mentioned is in Anne Arundel County. It is not in Baltimore City. It borders. That is why Baltimore City could not go in and investigate it because that is the first ones that I called.

There is also another hazardous dump adjacent to the Pennington Avenue landfill called Cejack Dump, directly behind Cavanaugh's, which is a rendering plant for meats and animals that they make for fertilizer and all.

Now, Cejack, Cejack has been in the past 2 years I guess, he was killed at that job site. Someone evidently had robbed him because he always had a roll on him that would choke a horse, let alone a daggone—you know, what you and I would see for money.

It was noted, I have learned over the years from people down at Curtis Bay that he was dumping this waste materials from factories you know, and he would dump it on his property there.

This area we have requested over and over to be tested for the problems that you would find in the future. Now, Cejack's dump lays adjacent to what is called Cabin Branch. Cabin Branch then goes into Curtis Creek, which then goes into the Bay.

Now, as Mrs. Sipes informed me a little earlier, as far as the Pennington Avenue landfill is concerned, they were willing to

accept the hazardous materials from American Recovery, I don't know how their notations are there.

Ms. SIPES. They were going to accept the sludge from American Recovery and said they were going to do it on the QT. Nobody knew about it. But somebody in the city called up and leaked it to the Curtis Bay Improvement Association and through phone calls to everybody in Annapolis and Baltimore City, the mayor decided against it.

Mr. SMITH. That is not to say what was dumped there, which was dumped there by American Recovery prior to these phone calls. Not have just this sludge that they wanted, but they had told us, Ed Moore has even said to us at our meetings that we have had that they in fact had dumped there.

Ms. MIKULSKI. I would like to interject here a minute. Many of the things you are presenting here are quite shocking. This is new material from the standpoint of the committee. I am going to ask you if you will, I am happy to pursue these issues you have raised, Mr. Smith, but I would like to confine the subject of this discussion to Hawkins Point and American Recovery.

And I would like from you, then, additional information.

Mr. SMITH. Right. Well, I have interjected these items purposely. I read your itinerary of the mode you wanted me to follow, but I felt it should go on record sometime, somewhere, that these things have happened, also.

Ms. MIKULSKI. Your time has almost expired.

Mr. SMITH. I realize, but others have had time, too.

Ms. MIKULSKI. Mr. Smith, I am your friend. How about bringing yourself under a little bit of discipline, and we will proceed, and you will have your chance.

Mr. SMITH. OK.

On the weekend of July 3, 1981, this is an excerpt of a letter to you from Governor Hughes and Dr. Buck. In reference to the flooding area on Burt Street into and by American Recovery.

Ms. MIKULSKI. Is this the July 25 letter?

Mr. SMITH. July 25, yes, ma'am.

Ms. MIKULSKI. I have the letter.

Mr. SMITH. Since that time of that particular incident you met with us at Council's restaurant, at the Library and subsequently at Council's. I will leave these pictures which shows the flooded area the next day, July 4, which would indicate the water levels that came through that creek.

Also, I have the one, the bulldozer which bulldozed that property over on the stream, would have to be completed by November 1 of 1982. To be up to date, I went to that street on American Recovery adjacent to, which is Burt Street. The work that has been started, and what they assumingly are intending to do is an insult to you, an insult to the committee, an insult to the community.

Because the problems that they even creating by the excavation of this stream are only going to flood American Recovery out even more. You stated a little earlier about eating steamed crabs, but you are not going to be able to eat steamed crabs from the Chesapeake, you will be eating crabs from Louisiana or Georgia if they don't do the polluting down there.

Also, please let it be noted that the pollution control, or the Coast Guard, was called in. The Coast Guard was called in that day. As of the date, that is July 1981, this is May of 1982 and the Coast Guard has never given us a response of their inspection of the facilities there, of what damage and what pollutants went into the water, because they took test samples that day.

Also, the fact that one of their employees depicted in one of those pictures was pumping out of American Recovery into that stream because they were flooded out. What was he pumping into that stream? Now, if they widen that stream, it comes from Curtis Avenue, it is a storm system, and it goes adjacent to or, and through the properites of American Recovery, if the thing is not widened enough, from the time we have had this storm in July 1981, what says we should have had another storm or could not have another strom since or before this thing is resolved by November of 1981, 1982?

The fact is that everybody seems to be dragging their feet in order to take and resolve problems that will take and clean up these hazardous environmental conditions that we have to live with.

We were at, my building, I have a sundeck built on the second floor. We were up on the deck back in early 1980, the middle of 1980, where the fact the gases were so strong from American Recovery that you couldn't even breathe. I am saying couldn't breathe, couldn't grab a breath of air until the wind blew these gases away.

This is from American Recovery. If you call the EPA, you know, "Well, American Recovery is not operating today."

Ms. MIKULSKI. Mr. Smith, we have two different agencies. I just want to make sure we have an accurate record. EPA is a Federal agency. The State health department is the State agency. When you say who you call, would you please identify whether you called city, State, local or Federal agencies?

Mr. SMITH. We would call the city health department, then we called the State health department.

Ms. MIKULSKI. Fine. I just want to be sure we have a clear record.

Mr. SMITH. I was wrong there.

Ms. MIKULSKI. You are doing fine.

Mr. SMITH. But we found the same sort of masses of air, fog, cloud, I don't care how you want to describe it, coming from American Recovery that would engulf the whole low-lying area there of Burt Street all the way down to Anard Street which is an extension of Benhill Avenue, which runs parallel to Curtis Avenue.

When the air quality people were called, they have a 24-hour number at Montabello Hospital, they can't get anybody out there because even though it is 24-hour emergency, they have no one available.

The first thing the guy tells you, well, by the time I get there, it will be gone. We will just keep an idea where it is coming from and check it out tomorrow. But the situation is today, or at this hour.

If he tells me that he cannot get to my place within 2 hours, which is what he has told us, I mean, I can get to the District of Columbia in an hour without any troubles. He can certainly come

from in town to Curtis Bay and check what the problem is and what we are breathing, which we don't know. If you want to set up an agency to enforce the waste problems or air problems we have in Curtis Bay, then there should be a monitoring trailer or station or someone in that immediate area to locate themselves there on a 24-hour basis.

You are talking about putting an additional extension on using Hawkins Point for a landfill. If you are talking about the new dump that they want to use up on Quarantine Road, Baltimore City want to put in a new garbage dump, there is no agency we can call.

There is no one we can call that would come down and inspect at the time these things happen. So what you are talking about is 2 weeks to a month later, if you get an ear for some person to come down and to inspect at that time.

If I called an agency and asked them you know, look, they are dumping drums over here at the new landfill, but the time this bureaucracy takes 2 weeks or a month, it is covered over.

It is already done. I certainly don't carry a camera with me 24 hours a day to be able to take photographs with long-distance lenses on this to watch this truck, where he is going to dump it.

But if you had agencies that are going to monitor such a powder keg of industrial wastes, landfills. Monument Street is an isolated area and no disrespect to those people at all, I wouldn't want that situation, but we have 10 times worse than what Monument Street has.

Ms. MIKULSKI. That is irrelevant to the discussion.

Mr. SMITH. OK, but there should be some agency located somewhere near the site. If I call the Coast Guard and they take tests of the water samples coming out of American Recovery and still have no report, and I bet you can't find a report on it.

Ms. MIKULSKI. We are going to look. You have three additional minutes.

Mr. SMITH. Basically, what we are saying about any hazardous waste facility you want to put at Curtis Bay, if you have no control, you don't have any enforcement. If you do have any enforcement, it will take 3 years and you can forget it.

You are talking about one little stupid thing which is in this little book sent to me in reference to the Hawkins Point facility, it says as far as air quality is concerned, the only conceivable——

Ms. MIKULSKI. Mr. Smith.

Mr. SMITH. Yes.

Ms. MIKULSKI. Cite the report and the page number.

Mr. SMITH. OK, the report is by Dames and Moore. The page number is 14.

Ms. MIKULSKI. It is entitled the Environmental Effects of the Hawkins Point——

Mr. SMITH. Environments Effects Report on the—it was prepared for the Maryland Environmental Services. The stupidity of what I am reading is the fact of why I don't understand, and someone is going to have to help me, but they are telling us the only conceivable unavoidable impact would be caused by odor and particularly emissions from vehicle exhaust fumes.

And here is Glidden right next door that is putting on such an odor and such a cloud of waste in the air that it blinds people on a major highway, Key Bridge, and causes a massive accident and backup.

And also takes and pollutes the waters of our bay. You know, my last statement will be, years ago you remember the old National Boh commercials we depicted clams and oysters and crabs dancing up and down the Chesapeake Bay, the land of pleasant living.

Well, the way that you are all going is that we are going to be visiting these clams and crabs and oysters in a public health hospital for pollution, I have lost the word there. But anyway, we are not going to have what is our heritage.

The bay is certainly as much a vital asset to Baltimore and Maryland, in fact more so, than any of these chemical companies. Thank you very much.

Ms. SIPES. I would like to add one thing as far as American Recovery. On September 17 of 1981, after I visited the plant we had a meeting with Mr. Eichbaum and members of his staff. We were told that by October 1 construction would start on concrete pads for American Recovery to store their drums, et cetera.

And to my knowledge, nothing has been done. Not one thing we were told at that meeting has been accomplished.

Ms. MIKULSKI. I am glad you brought that up, Ms. Sipes. That was going to be my question, which is what were you promised, by whom and what has happened?

Ms. SIPES. Well, as far as I know, nothing has happened. We even asked if they had posted the bond which they are supposed to post for closing. At that particular time, I could never get a straight answer whether they were supposed to post one or they weren't.

They told us that they would take care of the drums, they would be stored on concrete pads with some kind of covering to keep them out of the weather.

We were told they would take care of the drums in the third floor storage area. And I really can't say that everything hasn't been done. I really haven't taken a tour.

Ms. MIKULSKI. Ms. Sipes, who promised you this?

Ms. SIPES. Dr. Eichbaum and his staff.

Ms. MIKULSKI. It wasn't the company that promised this? This was the State enforcement agency, is that correct?

Ms. SIPES. Yes, ma'am.

Ms. MIKULSKI. State enforcement and a State commitment?

Ms. SIPES. Yes.

Ms. MIKULSKI. I would like to go back to two questions on enforcement. In your letter to me on July 25, you said this: Ron Nelson, I am quoting now, "Ron Nelson told me we have to prove there are violations of the permits. We are not chemists," you say in your letter, "but I can read a noncompliance report when it states they exceeded their limits, what more proof do you need?"

"If we have to be the watchdogs and prove it, what then are we taking enforcement for?"

Ms. SIPES. That is right.

Ms. MIKULSKI. You said this before. When you went to the State agency and spoke to this Mr. Ron Nelson, what did you ask him to do?

Ms. SIPES. Well, I never went to the agency, you know, with this. This is in our general meetings, and we talked to him.

Ms. MIKULSKI. I see. What was said? What did you ask? This is at the improvement association meeting?

Mr. SMITH. Right.

Ms. SIPES. We told him about exceeding the limits, like suspended solids that were allowed to go into the water, et cetera. At one point he told me that we had to prove they are in violation.

I mean I am not a chemist. I can't take the water sample and run it home to my lab and see what is in it. If they are exceeding——

Ms. MIKULSKI. I am sorry. It is not funny. In fact, it is so tragic you have to laugh. Go ahead.

Ms. SIPES. The thing of it is, I don't have any figures right now in front of me but just supposing the suspended solids are only supposed to be 1.5 milligram? They turn around and come up with a noncompliance where they have put 10 times that much.

All they are told is don't do it again. I am not saying one violation in itself is such a major thing. But when you look over the noncompliance and see this happens two and three times a week——

Ms. MIKULSKI. It has been a persistent pattern. Now, I would like to put enforcement aside for the moment. As you know, just about the time we were taking that tour in August, I believe, there was an announcement—I visited on August 12. There was an announcement that there was going to be created this mega dump at Hawkins Point, and American Recovery was to be relocated there.

Ms. SIPES. Right.

Ms. MIKULSKI. Do you recall that?

Mr. SMITH. Yes.

Ms. SIPES. Right.

Ms. MIKULSKI. My question to you both was, what were you told about the relocation of American Recovery, and what were you led to believe would occur?

Ms. SIPES. Basically, we were just told that they were thinking about getting them to move to a site at Hawkins Point. To me, to put them down on Hawkins Point was, out of sight, out of mind.

Ms. MIKULSKI. Has any State official or Federal official said to you, this is what is going to happen to American Recovery? We are going to relocate, do actions, and then this is how we will clean up the site?

Ms. SIPES. They have never mentioned how they would clean up the site. They have never given a definite answer as to whether American Recovery will move or not move. Right now, it is still in the talking stage.

It is probably one of the reasons they use not to fulfill the obligations of the permit.

Mr. SMITH. The statement that we were told, in fact, that American Recovery, it is—it would be questionable if they will move or if they will stay where they are at if an outside firm would purchase or has entertained the idea of purchasing American Recovery, and either staying there or moving on to the new site near Hawkins Point.

And that is all we know about it as far as the building. If it is in fact in the process of being purchased, American Recovery being purchased by another company, that might indicate why they have not done the work they had intended to do, instead of putting any information funds out, letting the new company coming in to put these additional funds out.

But as far as—there has been nothing positive at all. This gentleman who is Director of Landfills now who took Mr. Ed Moore's place?

Ms. MIKULSKI. Yes.

Mr. SMITH. You asked him about additional dumping areas in Baltimore City, and he knew of none. Well, on Patapsco Avenue——

Ms. MIKULSKI. Private sector.

Mr. SMITH. Private sector. I noticed this Thursday the dumping of black material, which shows we don't know what it is, but I am wondering if he is aware of this particular dumping which is on the Patapsco Avenue extension. The area is just southwest of the Patapsco Avenue bridge that goes over the south branch of Patapsco Avenue. The people leasing the property is AV&E, which is a container corporation.

They have a lot of containers there but they have a lot of dumping that is going on there. And the fact that these things are just unknowledgeable to these people, it's just beyond our thoughts. You are saying about relocating, or the State is, about relocating the residents at Hawkins Point. You recall back where they wanted to build this dam out West someplace where they found the little snail darter and stopped construction of the dam.

But what happened to Hawkins Point when we had big-mouth bass that was that big [indicating]—and I know they were that big; it's no fish story. And where they had these large whooping cranes, I am not familiar with the breed of bird, you know, but all this has been wiped out by the chemical factories. And you know what kind of provisions are being made to relocate the natural resources in the Curtis Bay area, as well as the residents. But they have made no provisions to say, OK, fish, crabs, and everything else, we are going to relocate you into a cleaner living area. We are just going to let you die off and go extinct.

Ms. MIKULSKI. One other question to you, Mr. Smith.

Mr. SMITH. I am sorry I am so agitated.

Ms. MIKULSKI. No. You see, you brought out things that have not been brought out before. You had an absolute right to feel frustrated and agitated. So don't worry about that. You have now in your testimony today identified or described a variety of sites not licensed to receive waste material; is that correct?

Mr. SMITH. Right.

Ms. MIKULSKI. So what you are saying is in the Curtis Bay-Hawkins Point community, that there is a pattern of illegal dumping?

Mr. SMITH. Absolutely.

Ms. MIKULSKI. In other words, some guy owns something and he takes a little on the side. Is this—whether it was Cejack—and I am not saying Mr. Cejack did, but it seems somebody who owns a truck company. So they have their trucks and containers. But they take a little of this stuff, this unidentified stuff, and are dumping it.

And the same way with the Quarantine Road one, and the Pennington Avenue one, and so on.

Mr. SMITH. Totally, absolutely.

Ms. MIKULSKI. Is it your feeling based on your observation, then, that illegal dumping is a serious problem in the Curtis Bay-Hawkins Point community, and that it is going unmonitored and just unenforced?

Mr. SMITH. Right. Most definitely. And to the fact that there has been, I know, for the last no less than 20-some years, you know, but I know especially in the Glidden area. Then we come back closer up to the resident areas of Curtis Bay.

Ms. MIKULSKI. You have noticed this, though, in the past two?

Mr. SMITH. Oh, definitely.

Ms. MIKULSKI. OK. Have you brought this to the attention of the State?

Mr. SMITH. Yes.

Ms. MIKULSKI. What was their response?

Mr. SMITH. We have never gotten any response from them. The last time I brought the Cejacks—and I stand to be corrected if I brought up the Glidden area. But Cejacks and Jesse Williams was with John Griffin. Jesse Williams has been in the, I would say, the last year, 16 months, Jesse Williams site. But as far as in the October meeting we had with Ron Nelson, we had it at—was it Bay Brook Recreation Center?—I know they would find I mentioned Cejacks in that testimony also to them. I know that is at least in October of 1980 that that was brought up.

Ms. MIKULSKI. So you have talked with Mr. John Griffin about some of these sites?

Mr. SMITH. Right.

Ms. MIKULSKI. Who else have you talked to?

Mr. SMITH. Mr. Ron Nelson.

Ms. MIKULSKI. The chief enforcement officer from the State?

Mr. SMITH. Right.

Ms. SIPES. I get the feeling sometimes, that all Baltimore City sees is dollar signs. They put these things there, and they don't care.

Ms. MIKULSKI. What Mr. Smith is bringing up is the illegal dumping.

Ms. SIPES. Right. Well, this is one reason why they let American Recovery operate. They always say, well, you want the midnight dumpers. But American Recovery is almost like a midnight dumper. He does everything against the permit but he's doing it under the sanction of the permit.

Ms. MIKULSKI. What you are addressing is three issues: One, American Recovery and your concern about enforcement. Then you brought up the issues and concerns about illegal dumping that have not been addressed. Thirdly, you brought up the issue of Hawkins Point, in which you have serious environmental concerns about the expansion of that facility. Am I correct in summarizing?

Mr. SMITH. Correct. If you would look at an old map of the Hawkins Point area which would include—and I believe there are three ponds, or lakes that would be on the south side of Glidden, and if you would look at a map today, as this gentleman was talking

about, an aerial photograph, you would find the lakes are just about gone, some of them are gone. It's all by this type of fill.

Ms. MIKULSKI. The Chair wishes to observe that I have seen an old city map identifying lakes or lagoons or ponds. And the Chair has made an unannounced site visit to the area under consideration and has observed the same things you have brought out.

Mr. SMITH. I would have to say no less than 30 years ago my father would go down to those ponds, fresh water fishing. My father with a couple of his friends physically took fish that were floating on the water when they went down there to fish, or called the water resource people, whoever was in the agency at that particular time. He took them to them. And they sent their inspectors down and found nothing.

But Ben Poe told us at a meeting either in private or—it was probably a private meeting—he had his people when he worked for DuPont that they had cleaned the lake and pulled the fish out and got rid of the fish that were there, the ones the pollutants had killed.

Ms. MIKULSKI. To summarize what else you said, you do not feel when you approached the State enforcement people that there is a one-stop shop for citizens to go to that would have permits, the records, the files, people to talk to and work with you; is that correct? That everything is spread out. You keep talking to different people and having to go to different people for information. Is that correct?

Mr. SMITH. Correct.

Ms. SIPES. Basically, the actual files are kept in all different places. In fact, their systems, like the filing system, you can go through the file and there will be a letter from 1973 and the next letter is from 1981. This is the way it goes. You have to spend all day just going through one file to see what you are looking at. There is no consistency in the filing. Everything is in a different place. Permits are in this room, water permits are in this room, violations are in this room.

Ms. MIKULSKI. Well, the files reflect on the organization, Ms. Sipes. I must say every file I have gotten from you has been detailed, chronological and accurate. Really, your recordkeeping on your contacts has been extremely—the thoroughness and precision of your methodology has been very much acceptable.

One last question. The State is supposed to be enforcing Federal laws in this area. Have you ever contacted Federal EPA to assist you with your problems? And what has been the nature of your response?

Ms. SIPES. I have contacted the Federal EPA in Philadelphia. And I think to a degree in the beginning he has helped in putting our state EPA maybe a little bit more in on it. But I can't really say the Federal has gotten too involved.

Ms. MIKULSKI. Who did you talk to?

Ms. SIPES. Paul Ambrose.

Ms. MIKULSKI. What did you ask him to do?

Ms. SIPES. Basically, I questioned him on some of the things on the permit. I will be quite honest, I am not sure of my exact questions at this time. But I questioned him about the explosion they had and several things.

Ms. MIKULSKI. What did you want EPA to do?

Ms. SIPES. I wanted EPA to follow through on the Federal regulations if the State wasn't going to follow through on the State regulations. All we hear is how good our State regulations are, and they probably are. But they are only as good as they are enforced. If they are not enforced, they are not worth the paper they are written on.

I would like to say one more thing too. I am tired of industry telling us, well, if you make us to EPA standards like the air control, et cetera, we are going to move. So right away everybody says, oh, they can't move, we will lose this, we will lose that.

I would say if they are going to move, they are going to move anyway whether it's because of enforcement of the control system or because they are not doing business. Because if they are making money they are sure not going to pick up a multimillion-dollar plant and move.

Ms. MIKULSKI. Let me advise you first of all, this is why we have Federal law, so one State can't be pitted against the other. There are supposed to be basic Federal standards in these areas.

Ms. SIPES. This might be it. This is what we are told. This is like with Allied Chemical. I don't know how true it is but we were told they said to the city if you don't take our chromium waste, we are going to move. So right away the city doesn't want to lose the money, so they take it.

Ms. MIKULSKI. I thank you for your testimony, and also for your persistence, your thoroughness in working in this area.

Mr. SMITH. Thank you.

Ms. MIKULSKI. I would like to now call repesentatives of the American Recovery Corp.

## STATEMENT OF WARREN RICH, COUNSEL, AMERICAN RECOVERY, INC.

Mr. RICH. Thank you, Madam Chairwoman.

Ms. MIKULSKI. Would you identify yourself, please.

Mr. RICH. I am Warren Rich, attorney for American Recovery.

Ms. MIKULSKI. The Chair invited Mr. Robert Taylor here, chief executive officer of American Recovery. Where is he today?

Mr. RICH. He is in east Chicago today and could not make it.

Ms. MIKULSKI. Why?

Mr. RICH. He had some business at the plant there and it was impossible for him to return. I am authorized to answer questions for the company and explain the situation. I know it fairly well. I have been involved with it for some time.

Ms. MIKULSKI. Fine. Would you please state the name of your law firm and any other clients that you might represent in the environmental area. Are you an environmental lawyer?

Mr. RICH. Yes, ma'am.

My name is Warren Rich, a partner in the firm of Niles, Barton & Wilmer. My office is in Annapolis and Baltimore. I represent a number of other companies involved with production of products which result in having waste streams. I am knowledgeable about various waste streams and also at one time was an assistant attorney general for the State of Maryland. I don't think it behooves me

to list all my clients. I don't think that is relevant to this hearing. But I do have other clients who have waste streams and utilize hazardous waste facilities.

Ms. MIKULSKI. We often like to see if there are any conflicts. Proceed in any way you want.

Mr. RICH. This is a statement in behalf of Robert Taylor. I am authorized to give that statement because Mr. Taylor is unable this morning and the company has indicated that I should come here. I would also answer any questions that you have, Ms. Mikulski. I would like to note initially that American Recovery is a recycling and regeneration type of facility.

It is one of the few recycling-regeneration facilities in the Baltimore metropolitan area. It serves the purpose of being a recipient of waste streams which may otherwise be disposed of improperly. And it is somewhat of a safeguard on the system of treating and disposing and storing hazardous wastes in a safe manner. American Recovery has three basic processes: liquid waste disposal, solvent recovery, and laboratory waste disposal.

I would like to explain a little bit about how the liquid waste disposal, it consists of treating spent acids, pickle liquors, and caustic wastes from various industry. Industries produce a product and they have these types of waste streams. It used to be back in the fifties and before the fifties and even up until I would say 1969 that these waste streams were discharged per se into the environment. They were discharged into the waters of this State with very little safeguards and very little treatment.

Now, these types of streams come to American Recovery. American Recovery neutralizes these streams with the addition of certain chemicals and will take out the heavy metals in these streams. They treat the heavy metals. Heavy metals are, for want of a better word, the bad constituents of these streams. American Recovery takes out these heavy metals and binds them in a way that they become nonhazardous products. They have been declassified and decertified, and they are not hazardous products.

I would like to just give you a little bit of background. I don't want to get off the beaten track, but a lot of the problems with the so-called hazardous waste, a lot of the reasons they are called hazardous waste is because they have the ability to migrate, to move, to go into the environment and cause trouble.

If you can bind these constituents, these elements through chemical treatment or whatever, they become nonhazardous. There is a methodology both within the State and Federal Governments for declassifying these wastes. A substantial portion of what American Recovery does is to take these spent acids and pickle liquors and bind them in a way that they are not hazardous waste, not at all. These sludges or metals are then placed in a proper landfill. That is authorized. Everything is manifested and there are reasons for everything that is done. There is some confusion that everything in American Recovery is hazardous waste. That is absolutely not true.

Now, the second area they have is the solvent recovery process, which are the paint thinners and those type of constituents where they are refined, solid portions separated from liquid portions and liquid portions are then recycled into fuel supplements. The solid

portions are solidified, rendered inert through chemical treatment and ultimately disposed of in what is called a secure or hazardous waste landfill. One operating today—I see it's operating today, having looked at the paper—is the BFI landfill, Solley Road.

The third major element in American Recovery's routine is treatment of laboratory chemicals. These are chemicals received from universities, hospitals, and research institutions. They consist of laboratory agents which have outlived their shelf life. These are properly, now, because some of these are hazardous wastes, some are not; some are hazardous wastes because of corrosive capabilities, because they react to water and air. Air and water reactive is the proper term.

These are all now handled by proper manifesting and by the State and Federal hazardous waste laws. And they are properly packaged and shipped. Now, it used to be—I mean, I think that one of the points I would like to make because I have some background in this area and was probably one of the first environmental lawyers in this State, is that you really did not have in Maryland a hazardous waste law or designated hazardous substance law until 1975. And you didn't have regulations on that law until, I think, 1977. I might have my dates a little bit wrong.

In the Federal area, I mean everybody talks a good game. But as I recall, RCRA was passed in, I think, 1977, initial regulations in 1980. The initial regulations out of RCRA were so confusing no one on the EPA staff could even understand what they said. I am talking about the people who wrote those regulations. They have since been redefined and there are certain changes that have been made. They are a lot more workable now. But they are very, very technically oriented regulated.

I guess what I am trying to say to you, given the fact that I think you have to impugn a good will to everyone involved in this game, certainly good will on the part of the Federal agency and good will on the part of the legislators who passed these laws and good will on the part of the State agencies who administer these laws and have been delegated to program, I think if you impugn good will to these people you have to recognize that this is a new game. The game is new since 1974 or 1975.

You heard Mr. Kaufman's statement. A lot of the stuff he's been involved with has been in recent years, even though he was on EPA staff from the beginning. And it is a new game. You are not going to cure the problems that persist, that have persisted for 10 or 15 decades in Baltimore metropolitan area and also throughout this country in 2 years or 10 years or 15 years.

The problem is an immense problem. You are also not—I think you will also find that the problems with respect to Monument Landfill are not all that unique with respect to landfills throughout the country but that a good percentage of landfills throughout the country have those problems. There were very limited controls during the course of the last 50 years. There were very limited controls on landfills.

We are just finding out now what in fact has been placed in these landfills. Having given you a little background with respect to—the other point I should say this, and I say this with as much kindness as I can muster—is that these types of issues are very

technical issues. I looked in the paper last night and saw that a candidate for government has placed these type of issues into a political campaign.

I just don't think that is the place for these issues, that political campaign. I think these are technical, serious problems. I think the citizens should be concerned about various problems. I think they have that absolute right. But to appeal to the worst, or to certain instincts of people for political reasons, Ms. Mikulski, I want you to know that I am not at all talking about you at all with respect to this because I know of your long involvement with this, when I was assistant attorney general. It's just the wrong way to go. These are problems which have technical solutions, hopefully, and those technical solutions have to be found.

They are problems of long duration, curable problems to a great extent, and they will be cured.

Ms. MIKULSKI. Could we now return to American Recovery?

Mr. RICH. Yes, I will return to American Recovery. But I don't want to overlook certain things I think this committee should take note of. I say that with all——

Ms. MIKULSKI. The Chair welcomes the passion with which you feel. The Chair disagrees that environmental matters should only be left to Ph. D.'s and lawyers, and the Chair recommends you proceed with American Recovery.

Mr. RICH. Yes, ma'am, but I would never say that. I think the citizens have a vital role in this.

Let's get back to American Recovery. They have been in operation since 1970 at the present site. When they first started these processes, they were considered somewhat innovative. As is the case in many situations, industry is ahead of the regulators. But during the course of these years, the processes have been refined and they have been made safer and safer. And there are always going to be operational difficulties with these types of processes. But they are performing a service in the Baltimore community, a vital service which channels these waste streams in a way where they can be properly treated.

There has been discussion about the flooding problem. I remember promising you that the flooding problem would be cured before it was cured. I tell you I was not right about that. I was wrong and you were right—because these problems are of longer duration than I thought they would be. But the flooding problems are not caused by American Recovery per se; they were caused by a combination of a number of factors. One is the drainage patterns in the area.

Second is the historic usage of culverts which have been too small all over this country. They used 10-year storm culverts when in fact they should have been using 50-year storm culverts.

Last, because of the intrusion of other people into what is called the flood plain. I will tell you, as of today—and I had a meeting with Tom Andrews yesterday on this—as of today, the excavation is almost completed on the channelization for that, the excavation is completed, not the channelization. I don't know what percentage but it's almost completed, the culverts have not been replaced yet. And the channelization, concreting has not been put in place. But the first stage is underway.

They will clearly meet the deadline of next fall. There have not been any floods this year. The capacity, what I want to tell you is that, as of now, the capacity in that flood plain and stream is much greater, it has much more reservoir capacity than it did before. It is something which is curable, something which is being cured today.

It was something that took more time because of the various conflicts between the two opposing parties which were before Judge Karwacki in the Baltimore City Court, which I could not control and which American Recovery could not control. But those are problems which are real problems; those are problems which are being cured, and those are problems which have not repeated themselves this year.

With respect to the explosions that I have heard about, those explosions were not caused because of the ineffectiveness of these new laws. Those explosions were caused because of the fact that these new laws are new laws and that there are certain chemicals that are water or air reactive that were not properly labeled under the then existing laws and which have now—all those old reagents have been taken care of.

They are gone as far as I know. Those problems have not repeated themselves recently. But in any circle of upsets—I am not going to sit here before you and tell you there will not be upsets. There will always be upsets. It just so happens, though, that the effect of those upsets has not really been felt beyond the boundaries. Explosions were not felt beyond the boundaries of this facility.

I think I have gotten on my soap box enough. I think I have told you what I want to tell you. I would just indicate to you that we are in a fairly new area, that the biologists and sanitarians who enforce the existing pollution laws are learning the new game as well as the industries. I think it is something that is curable and something that can be taken care of in time.

I want you to know American Recovery has expended an awful lot of money. The facility has now been rebuilt, the third floor facility, improvements have been made. There was some discussion with respect to moving to Hawkins Point. I don't think that those discussions have been finalized because of an awful lot of other factors beyond the control of American Recovery.

Ms. MIKULSKI. Does that complete your remarks?

Mr. RICH. Yes, ma'am.

Ms. MIKULSKI. May I have a copy of them?

Mr. RICH. I didn't read them.

Ms. MIKULSKI. What did you read from?

Mr. RICH. This is just a rough draft. It's not a prepared statement. I will be glad to give you a prepared statement of what I said.

Ms. MIKULSKI. We will accept a copy of your notes.

Mr. RICH. Well, I will give you a clean copy.

Ms. MIKULSKI. No, we will just take it now.

Mr. RICH. Ms. Mikulski, I don't mean to argue with you but I have some personal notes and phone numbers and other things on this, where I am going this afternoon. I need those and I will give you a clean copy.

Ms. MIKULSKI. Is that the way you normally testify at meetings?

Mr. RICH. I have with me just so you understand, I have with me all of the compliance records, inspection records——

Ms. MIKULSKI. You do.

Mr. RICH. Yes. I have all that with me and I have prepared for any questions, I will be glad to answer them.

Ms. MIKULSKI. Also, I want to note American Recovery is in the midst of certain legal proceedings in terms of $40,000 worth of fines that have been levied by the State of Maryland. It is not my intention in any way to prejudice those administrative hearings, nor do I want at some subsequent time for whatever has been said here to be used as a way to weasel out of what is going to occur there.

It is also my belief to protect people's basic constitutional rights. I am not going to pursue with you, Mr. Rich, a line of questioning related to enforcement that I had intended to do because of the State's actions 4 days before this hearing. However, I will ask the State to submit to me a copy of the results of their administrative hearings with which they are proceeding. We will leave the enforcement issue aside for the reasons of this hearing so as not to prejudice in any way those proceedings. So we will protect you, your firm's interest, in that particular area.

Now, what permits is American Recovery operating under?

Mr. RICH. They are operating under a discharge permit which is both a State and Federal NPDS discharge permit. I think the Federal number is 0037. I don't have it off the top of my head but I think that is what it is. They are operating under a hazardous waste facility permit. They are operating under oil handler's permits. They are operating under air quality permits. I think that there was one more. Excuse me. They have interim authorization from the EPA.

Ms. MIKULSKI. I am sorry, I didn't hear that.

Mr. RICH. They have interim authorization under section A of the RCRA.

Ms. MIKULSKI. So you are one of those interim status facilities——

Mr. RICH. Yes.

Ms. MIKULSKI [continuing]. That have come up in our national hearings in which final standards have not been developed?

Mr. RICH. Yes.

Ms. MIKULSKI. You are operating under permits that have been issued by the Federal Government?

Mr. RICH. The NPDS discharge permit is both a State and Federal permit. So there are two Federal permits. Those are basically the NPDS for the discharge permit, discharge of non-hazardous constituents in accordance with the various standards. And also the RCRA interim authorization. As a matter of fact, EPA region 3 does review the air quality discharge permits.

Ms. MIKULSKI. What type of facility are you permitted as, and what is the classification, under RCRA?

Mr. RICH. We are permitted for these various processes under RCRA.

Ms. MIKULSKI. What is the classification?

Mr. RICH. I don't think it has a specific classification. I do believe it has a combination of classifications which could be deemed to be a resource recovery type of facility.

Ms. MIKULSKI. And that is?

Mr. RICH. It doesn't have, as I recall, a specific classification.

Ms. MIKULSKI. When you applied for that interim status permit, what did you list on that permit?

Mr. RICH. We listed the various processes I went over with you today, which is the liquid waste disposal, solvent recovery, laboratory waste disposal projects. We listed all those.

Ms. MIKULSKI. I am going to go into that more with the State rather than with you. Could we come back to the issue of relocation and closure?

Mr. RICH. Yes, ma'am.

Ms. MIKULSKI. Last August when we were trying to work on solving the flooding problems, the Hawkins Point announcement came that they were going to proceed in the expansion at Hawkins Point and that one of the factors was that the State was proposing to relocate American Recovery to Hawkins Point. Could you tell me what has happened since that announcement?

Mr. RICH. Well, I can tell you as much as I know. I guess that is as much as anyone in American Recovery does know.

Ms. MIKULSKI. That is all I am asking.

Mr. RICH. All right. There was a site, I think a fairly low-lying site near the proposed hazardous waste landfill, to be run by MES, which encompassed a little bit more than 9 acres, which was to be utilized by—which was sort of designated for our use. Upon looking at that site, it may not have been totally suitable. And it may have been necessary to be utilized by the State.

So that particular site which was at first believed to be suitable, or to be used by American Recovery, was no longer really the designated site. We did locate another site which was a little bit smaller, which was higher, which is owned by Baltimore City.

There has been some discussion with people from Baltimore City to allow American Recovery to utilize that site. The utilization of that site, however—and I would also indicate to you that American Recovery is generally favorable to relocating to that area—it would not relocate at one point in time, but they were earmarking to remove all the laboratory, the reactive type of procedures first, because that was the most open to the public, and to move those to the Hawkins Point area first. It would have been moved in a matter of sequence. That was always the easiest to move first because of the small nature of that operation.

For various reasons which I am not privy to, that site has not been made at this juncture—there has not been a determination, an absolute determination to make it available to American Recovery.

Ms. MIKULSKI. This is the property owned by the city of Baltimore?

Mr. RICH. Yes, ma'am.

Ms. MIKULSKI. At the Hawkins Point?

Mr. RICH. Yes. It's a small, high area next to the so-called Potters Field, as I recall. Sort of in the middle of that area.

Ms. MIKULSKI. In the discussions that the State initiated with American Recovery, you were present as counsel to Mr. Taylor?

Mr. RICH. Not all of them but I have been probably to most of them.

Ms. MIKULSKI. You were essentially there. Was it the State who made these offers to you in terms of particular areas? Who was it and what did they offer?

Mr. RICH. Well, to indicate it was an offer, I don't think that is a proper terminology.

Ms. MIKULSKI. Who made the presentation?

Mr. RICH. I have discussed this matter with Mr. Griffin, Mr. Eichbaum, with Mr. Nelson, with I believe Tom McKewen at MES, and with Ron, the bald fellow that works for Tom McKewen whose name escapes me at this moment—Ron Albrick.

Ms. MIKULSKI. They were the ones who originally suggested the low, level site?

Mr. RICH. The site was not to be unsuitable because it was a lower site. I only describe it is lower than the other site. The other site is very high. That was not the reason. The reason that that initial site would not be utilized by American Recovery is because of the fact that it may be necessary for usage by the State.

Ms. MIKULSKI. So they said we have a site but you can't have it because we might use it?

Mr. RICH. No.

Ms. MIKULSKI. I am not trying to be silly. It seems to be a silly way to have a meeting.

Mr. RICH. There is a thought. Let me say a couple things. American Recovery, for whatever reasons, had a few explosions 1½ years ago, for whatever reason. Whether they were minimal or big, they were explosions. All I can tell you is this: that both American Recovery and the State is sensitive to the will of the people in the area. If it is possible to remove at the very least that element of its operation to an area which would, where the people would be happier, where they would be less concerned, that was the intent of both the State and American Recovery.

Ms. MIKULSKI. That is an interesting comment about the explosions. What part of your operation——

Mr. RICH. That's the laboratories.

Ms. MIKULSKI. Those scientists sending you those materials, why did it explode?

Mr. RICH. There was one because of a mislabeling, not indicating that it was air reactive.

Ms. MIKULSKI. Did it have anything to do with your storage?

Mr. RICH. No.

Ms. MIKULSKI. Mislabeling of scientists?

Mr. RICH. No, it was probably mislabeling, that particular batch had probably been shipped before there was enforcement with respect to the manifesting and shipment of this type of equipment.

Ms. MIKULSKI. When did that explosion occur?

Mr. RICH. I do not have that date, it was so long ago. I think it was testified to today it was 1980.

Ms. MIKULSKI. We had manifests?

Mr. RICH. Manifests, if you want me to indicate, manifests were in effect and there was question with respect to manifesting of a lot of the material subsequent to the initial adoption of the EPA regulations. I am not saying to you there were no regulations. I am saying to you this happened in 1980. And for whatever reason, this was air reactive and was not labeled as air reactive.

Ms. MIKULSKI. Anyway, what the State and you talked about was moving to Hawkins Point that which causes the noisy alerts for danger at American Recovery; is that correct?

Mr. RICH. Yes, as a first step.

Ms. MIKULSKI. They were talking about complete relocation?

Mr. RICH. Yes, ma'am.

Ms. MIKULSKI. Mr. Rich, what financial conversations did you have about that? Did the State say we are going to pay to move you?

Mr. RICH. No.

Ms. MIKULSKI. Did you ask who was going to pay for the move?

Mr. RICH. We would probably have to, we would probably have had to cover those costs.

Ms. MIKULSKI. You would have paid to do that.

Mr. RICH. American Recovery.

Ms. MIKULSKI. To relocate.

Mr. RICH. Yes, ma'am. There was no financial offer of money to relocate.

Ms. MIKULSKI. They didn't say here is the site and we will help pay for you to relocate, to clean up the citizens' concerns, and so on?

Mr. RICH. No.

Ms. MIKULSKI. Does American Recovery have a closure plan? Let's put relocation aside for a minute. What is its closure plan for the time it would no longer be in operation?

Mr. RICH. I cannot answer that question because I have not read the closure plan. But in order to get a hazardous waste permit from the State there must be some contingency plans, and they have some contingency plan. Let me indicate what a closure plan is. Basic closure plans try and seal off any migration of chemicals from that site which would in fact affect others. Whether a closure plan is necessary, whether there is a closure plan, I don't know.

Ms. MIKULSKI. You have to have one.

Mr. RICH. Well, I have not read it, as I indicated.

Ms. MIKULSKI. As their attorney, do you review it all?

Mr. RICH. I have reviewed the permit; yes, ma'am.

Ms. MIKULSKI. Do you then—in terms of a closure plan normally they talk about the time designated for monitoring. What is the time?

Mr. RICH. I do not know. As I recall the regulations, State, I would assume it complies with State regulations, which is some number of years.

Ms. MIKULSKI. Of course it is some number of years. But is it, do you know—you do not know?

Mr. RICH. Ms. Mikulski, I cannot recall whether it is 50 years or 25 years or 10 years. I am sure the regulations so specify.

Ms. MIKULSKI. What type of financial posting will American Recovery make at the point of closure?

Mr. RICH. They have to post adequate bonding or other alternative financial responsibility measures as the law requires.

Ms. MIKULSKI. Are they—as part of your relocation plans and discussions, have you looked into that?

Mr. RICH. We have looked into—I have not been involved on the technical side, but I can tell you what has been done; obviously

when you leave a facility it has to be left in a way which will not environmentally damage or affect others. If it is to be left, it has to be left in good shape. That is something that would have to be done as a matter of law. I would assume American Recovery would have to bear that cost.

Ms. MIKULSKI. Yes, you have to.

Mr. RICH. Yes, I am saying to you with respect to the transfer to Hawkins Point, which is an unusual situation to some extent, American Recovery would still have to bear the cost.

Ms. MIKULSKI. Thank you, Mr. Rich. I have no further questions. Just take those notes.

Are there any others who would like to speak with regard to the American Recovery rescission? Employees, past or present?

We will now move to the Hawkins Point Association, and we thank the people for their patience. Are you all set?

We would like to welcome the Hawkins Point Improvement Association, and we would ask you to identify the organization, its history, and anything else you would like to share with us.

**STATEMENTS OF FRED BLAGDMAN, VICE PRESIDENT; MARY ALI, ON BEHALF OF PRESIDENT; REGINA DARDEN, SECRETARY; AND VERNON THOMAS, HAWKINS POINT IMPROVEMENT ASSOCIATION**

Mr. BLAGDMAN. I am Fred Blagdman, vice president of the association. The president could not be here today. I would like to state first his wife represents him.

Ms. ALI. I am Mary Ali, wife of the president of the Hawkins Point Improvement Association. He could not be here today. I am to give a small talk in reference to the lack of what the city and State has done to help the neighborhood.

Mr. THOMAS. My name is Vernon Thomas. I am a resident of Hawkins Point. I am also a member of the Maryland Waste Coalition, and I am here to give some information on the Hawkins Point background and where we think it is going in the future.

Ms. DARDEN. I am Regina Darden, secretary of Hawkins Point Association, and I will also be discussing points on the background of Hawkins Point.

Ms. MIKULSKI. Thank you. Could you tell me how long the Hawkins Point Association has been in existence?

Mr. BLAGDMAN. The Hawkins Point Improvement Association has been in existence now going on 10 to 11 years. But before that, that is just the members of the community that did the work, not as an association. First we applied for the zone B permit so we would have a B–1 and a B–2 section. Then we applied for a park, a playground for our children. So that was the beginning of Hawkins Point Association.

Ms. MIKULSKI. So you started 10 years ago, when there were rezoning debates going on in terms of the nature of your community. And then also because you wanted a playground for the children in the community; is that correct?

Mr. BLAGDMAN. Yes. We also have tried to get sewers in our neighborhood.

Ms. MIKULSKI. You do not have sewers there?

Mr. BLAGDMAN. We have septic tanks.

Ms. MIKULSKI. The water that comes to you, is that well water or city water?

Mr. BLAGDMAN. No, when the pond became polluted they put city water in.

Ms. MIKULSKI. When was that?

Mr. BLAGDMAN. That was in the early fifties. Late forties and early fifties. Late forties. That is when I came to Baltimore, in the late forties.

Ms. MIKULSKI. Mrs. Ali, did you want to begin the testimony? Is that the way you wanted to proceed? How would you like to proceed? Proceed in any way you wish.

## STATEMENT OF MARY ALI

Ms. ALI. I will proceed.

The State and city has done very little to improve the rules and regulations on the book concerning the Hawkins Point area. Glidden has constantly polluted the air and the sea, and also Toms Cove. Now we have our Cosmos and other factories that have polluted the air. Our waste material from plants has constantly been dumped in the area without permits. We had the BFI dump, which used to be the old Rod Tyler landfill, which has a lot of chemicals on it, which we do not know what is in there. We have the SCM, which is Glidden's. They have no definite answer or solution to the problem on that landfill.

No health study has ever been done in the area. Now we have been zoned heavy industry. There is no sewage in the area. Everyone has their own septic systems. The city did give us a park, I guess about 7 or 8 years ago. They resurfaced the street at that time, one time, and it has only been surfaced one time in 20 years. We do have the playground, but no improvements have been done to the park. There is no water at the park.

We have a problem of flooding in certain areas. This has to do with the highway, and also the new 695. When they put in 695, they put in a new street, which they repaved, and when there is heavy rain we do have a problem with flooding. There have been several houses that have been flooded out. The water runs down the highway. We have a lot of water which we do not know where it comes from. When it rains you get the water running down the highway, it runs down the street like an S, and goes into the storm drain.

Now we have the problem with the State proposing the hazardous landfill. We also had the—the State had informed us of the chrome tailing landfill that they were going to put in which was only supposed to be for 2 years. Now I have the understanding, I do not know how true it is, that it has been expanded to go 20 years. I have also heard they are having a leaching problem from the chrome tailing landfill. How true this is, I do not know. We feel that in the future this community will be surrounded by landfills, which we are now. Then we have the BFI, the FCM, the Baltimore City landfill, and the possibility of the American Recovery coming to Hawkins Point. The State landfill. We have Gliddens, with their chemicals and pollution that just goes off anytime. They have big, I

guess it is leakage or spills at the plant. Two and three times a night you have rescue squads and fire equipment, emergency equipment coming to the plant because of a spill.

We also have this sludge landfill. I do not know how long it has been in progress. I happened to stumble across it one day. I stopped and talked to one of the guys I saw there. It is sludge from, I think it is the Dundalk area that they are bringing across the bridge. They are putting it on this landfill that belongs to the city near the train tracks. Each time they bring in a truckload, they have this, I guess, tiller that they cultivate it into the clay. But it does have a funny odor to it. Also they are proposing, if the site is not suitable for the landfill and Hawkins Point area, the one that they are in progress with, there is this other area which is directly across from Hawkins Point as a second site, 200 acres. I think it is in the county. I am not sure. But it is across from Gliddens Road. That is 200 acres would be the second site which would again be in Hawkins Point for this hazardous landfill.

We have a lot of pollution from the chemical companies that are within the county, all these within a quarter-mile radius. We feel that the city and State has had a bad track record dealing with our community, and I do not think our community will last if they keep piling in the chemicals and the hazardous wastes.

Mr. MIKULSKI. Thank you, Mrs. Ali.

## STATEMENT OF REGINA DARDEN

Ms. DARDEN. I am Regina Darden. I have a kind of a rough draft of a map of the Hawkins Point area. We have right here this tiny community, with all the rest of the industries surrounding it. We have SCM Glidden's up here which has many, many violations in the past year. It has caused accidents. It has titanium, chloride, and many other chemicals in the area.

Ms. MIKULSKI. Why do you not bring that up here and stand next to me. Others can see while you are showing me this.

Ms. DARDEN. OK, this is the community right here, which we are really having a big plea for help right now. We have the existing SCM Glidden's, which is the plant for paint pigments. Right now they are having a very big problem with the chemical leakage which caused the accident to happen last month. Within the last week the fire department has been called at least three to four times for this leak. This is Gliddens Road right here. Fort Smallwood comes off of there. We are right on the city limits. We have Anne Arundel County coming here. Coming down Gliddens Road, after the railroad track, it has sludge there that has been dumped since last year. The permit was supposed to be up last month, but they extended it to this summer, which I do not know whether it is going to be closed then or not. But the smell is very, very bad and it is coming into the neighborhood. Right in this area right here. It is coming into the neighborhood right now.

By this map here you can see how our community is really being surrounded. Also we have a dust problem which we really consider; when they put this hazardous waste in we really felt they would not control the dust because the rest of the companies are not controlling

the dust problem we have existing now. We have, I think it was city officials have come down there to take samples of the dust. The guy who did the samples died, and he took it with him. So they had to retest. And the samples are being in process right now. We still have not gotten an answer who it is coming from or what it is. But it turns the houses brown, has really brown spots on the car. Mr. Blagdman just bought a brand new car which has to be washed every day. Paint comes off his car when it is washed. It is just falling all over the place.

To sum all this up, I know it has been in the newspaper a lot about us asking the State to relocate us; this is why we are asking the State to relocate us because we are so close, and they are just surrounding our neighborhood.

Ms. MIKULSKI. Can I draw a circle just to be sure we know where you are?

Ms. DARDEN. Sure.

Ms. MIKULSKI. OK. I am going to leave this up here if any of you want to refer to it.

## STATEMENT OF VERNON THOMAS

Mr. THOMAS. I would like to say something about the background of the Hawkins Point community. What the president of Curtis Bay said is only a small part, but it was true. It is true we had ponds with good fishing, but what he did not say was that you could go down in season at the water and pick up some of the crabs. It was just clean water, clean air.

What I would like to say is that personally, I believe America is separated into two parts. It is the beauty part that is permanent, and it is the beauty part that is not permanent. We had a taste of the permanent beauty of America. We know, because in our neighborhood, what he did not say, maybe he knew but did not say, is like when the children would go to school, this is in the early forties—the neighborhood first was established around the 1800's; it was sort of like a forgotten community. It is good that it was, because like when the children would go to school, it is not very many of us I think that can say this, they could stop anywhere along in the neighborhood and they could select from three or four different varieties of apples. They could select plums. They could select any type of fruit that they chose. Then in the middle fifties Glidden came. That was the end of the fruit. That was the end of the clean air. And that was the end of the America that I had referred to as the permanent beauty.

A lot of people think, for instance, the Inner Harbor. The Inner Harbor I claim is not a permanent beauty because man has to replace this. The real beauty of America man does not have to replace. This is what is causing this. Companies like Glidden, you know. Even before the relocation came up I heard that American Recovery was to come to Hawkins Point. Is it that we are more immune to the problems American Recovery creates? Why should they remove it from Curtis Bay, with all due respect to Curtis Bay, why should they move from Curtis Bay into Hawkins Point? What about us? Do we not count? We pay taxes the same as anybody else. So I think that it is really unfair that we put our trust in city

and State government, and that they should put this monster on us and say, "This is good for you."

I was hoping Mr. McGirk would be here today because I understand he told one of my neighbors that, "You people should stay where you are. And all it takes to satisfy you is that we fix up Fort Armistead for you."

Who gives him the right to say where I should live and where I should die, or any of my neighbors for that matter. So I printed this sign here. And what I am trying to say is that this sign of this nature should be put at the beginning of any area where a hazardous waste site is put, because there are a lot of Americans that do not even know the meaning of a hazardous waste site. They travel 695. They will go right through this same area. And I think it should be a law that this should be—some type of warning should be posted so that the people would understand that they are passing through and what they could very well encounter.

Ms. MIKULSKI. Read the warning for the record.

Mr. THOMAS. The warning says "Entering Extremely Heavy Contaminated Area. Home of Glidden Paint, Known Producer of Death Gas Cloud and a New Hazardous Waste Site Owned and Operated by Maryland State, Friend and New Neighbor of Glidden Paint."

So we the residents of Hawkins Point do declare this area is and always will be very hazardous to your health.

And this is true, you know. And it makes me very angry, because we put our trust in our elected officials. And I think we should warn them that we are Mr. and Mrs. America. You are Mr. and Mrs. America, also. But you are Mr. and Mrs. Politician, you see? So we are the ones that are crying out for help. Only you and your constituents can remedy this. Any time that a State would put a facility on the banks of a river, I hate to say that they are insane, but it just does not work. You know, I would not dare state they were insane. I would just state maybe they do not realize what they are doing, let us put it that way. But I really do not think that they are doing us justice. I really do not.

So I have a lot of other things I would rather say, but, you know, I have stated to you the part of America that we live in now, that has changed. But then there is the other part of America that has not changed. And this part of America is mostly occupied by the owners of industry. Industry lives in the areas where they do not have to be bothered with hazardous waste dumps. They have enough clout that they can block this. And they put stuff like this in neighborhoods of Americans like Hawkins Point residents, Monument Street residents, Curtis Bay residents, and a lot of other residents.

We know that the sanitary landfills are really not hazardous if they are monitored and if they are kept intact, and things put in it like they are. But it always seems as though the hazardous waste dumps comes to Americans like myself. It comes to our neighborhoods. Are we less important to the city, State, and even the Federal Government? Are we less important to the people who operate industries? There are no hazardous waste dumps in their neighborhoods. Are they more important than we are?

So I think with all due respect I would like to say that Federal people, State and local people, I think they should realize that, and

maybe this is not putting it right, but I feel as though we are the employers. You all are the employees.

Ms. MIKULSKI. You have got it.

Mr. THOMAS. You see I do not like to point a finger, but Mr. Griffin, we have a problem almost every time we meet. I think he is a real nice guy. But to prove my point is this. Governor Harry Hughes never comes to our meetings, never. He sends Mr. Griffin. Now Mr. Griffin has a job to perform. Now if Mr. Griffin does not perform like Mr. Hughes thinks he should, then Mr. Hughes can fire him. Then I feel as though, being one of the employers, that if the city and State and Federal people whom we employ to look out for our welfare and look out for our life, love, and the pursuit of happiness, that if you do not do this, then we have the power to fire you.

You know I figure like this. When we go to cast our ballots, to me this is like signing a lease, I will say. You can only, even at the Federal level, the State level, and the city level, you can only obtain your jobs if you count enough leases with our names on them. So I say to everyone, I am not pointing any fingers at anyone, but I am saying this: That unless the State officials, the Federal officials, unless they do the job they are supposed to do for us, the employers, we will cancel their lease come time for it to be renewed.

You will not have the jobs that you have, and that goes for the little confused fellow in the house we own in Washington, D.C., on Pennsylvania Avenue. That goes for him, too. That is right. Because if we do not sign his lease, he does not live there any more.

That is all I have to say.

Ms. MIKULSKI. I think you have said it all. We would like to thank you—did you want to add one comment?

Ms. DARDEN. Just one comment. I had a quick comment about our community. Our community is a very tight neighborhood. It is all family, almost everybody is related. My son makes the fourth generation in my family to be still living out on Hawkins Point Road. It was very, very difficult for us to even go to the State to ask to be relocated, because we would know it would be really breaking up all our families. So it was a very difficult situation that we had to be put into because of all the surrounding industries, and plus the State moving in after them.

Thank you.

Ms. MIKULSKI. Well, would you just retain the microphone? Then I would like to move into questions, if I may, and thank you first of all for your very eloquent testimony and the persistence, the way you have gone about this issue. I would like to just clarify a few questions about the community first and then move on to certain administrative issues that I have.

How many families live in the Hawkins Point area?

Ms. DARDEN. Approximately 22 families.

Ms. MIKULSKI. I understand from my reading and also my staff's conversations with your husband, Mr. Ali, that this was one of the first black homeownership areas in the Baltimore community; is that correct?

Ms. DARDEN. Correct.

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Ms. MIKULSKI. I recall, both in terms of my own lifetime, and I am 45¾ years, as well as the history of Baltimore, that Baltimore was traditionally a black city. We did not—I mean traditionally a segregated city—and we did not have open occupancy in any way at least until the 1960's. Is that correct?

Ms. DARDEN. Right.

Mr. THOMAS. Well, Hawkins Point was not a segregated community.

Ms. MIKULSKI. It was an integrated community?

Mr. THOMAS. Yes.

Ms. DARDEN. It still is.

Mr. THOMAS. It still is.

Ms. MIKULSKI. It is an integrated community made up of 22 families. As I understand it, the people moved into the Hawkins Point community about the turn of the century.

Mr. THOMAS. It was in the late 1800's.

Ms. MIKULSKI. In the late 1800's.

Mr. THOMAS. Yes.

Ms. MIKULSKI. Then the people who resided there in effect established a homestead.

Mr. THOMAS. That is right.

Ms. MIKULSKI. And bought their homes, settled there, now are in third and fourth generation; is that correct?

Ms. DARDEN. Right.

Ms. MIKULSKI. So that you really are one of the first black homeownership neighborhoods.

Mr. THOMAS. That is right.

Ms. MIKULSKI. In Baltimore.

Ms. DARDEN. That is correct.

Ms. MIKULSKI. With a long tradition. And also where your roots have been. Now I have been over to the church. I have spoken to the minister of the church, and I saw the place where the community has traditional worship. That is where you took the vote?

Mr. THOMAS. To relocate.

Ms. MIKULSKI. I will bet it broke your heart to do that.

Ms. DARDEN. Yes, it did.

Mr. THOMAS. I would like to make one other statement I do not believe any other neighborhood can make. We live in a crime-free neighborhood. Who else can say this?

Ms. MIKULSKI. That is what I understand. So what you are saying then is that you really love this community.

Mr. THOMAS. That is right.

Ms. MIKULSKI. It has been your home when other people like yourselves could not have bought a home.

Mr. THOMAS. That is right.

Ms. MIKULSKI. And we make ourselves clear in talking like this. So that then for you to take a vote in this little church where you have been married and you have been buried and you have been christened and confirmed, was an unprecedented act for you to decide to do this, and that you made this, then, because you feared for the health and safety of your families. Was that correct?

Mr. THOMAS. That is correct.

Ms. DARDEN. That is correct.

Mr. THOMAS. I call it, we run for our lives. That is what I call it.

Ms. MIKULSKI. I remember reading about it. All the testimony has been moving, but I must say, that is extremely touching. I just want to be sure we understood the nature of that community. I have a very thorough understanding of my community, because I represented it in the city council. You then outlined your concerns about being surrounded by polluters.

Mr. THOMAS. That is right.

Ms. MIKULSKI. But you have withstood this, watching the steady erosion in your community.

Mr. THOMAS. That is right.

Ms. MIKULSKI. Now comes this final solution here; is that correct?

Mr. THOMAS. Monster. That is right.

Ms. MIKULSKI. Could you tell me, when this plan was announced, how was it announced to you, how did you find out about it? Then what did you do, who did you go to, and what were the responses?

I will repeat those questions. How did you find out about the Hawkins Point situation?

Mr. BLAGDMAN. From the newspaper. The Sun newspaper.

Ms. ALI. One morning the Sun paper called to ask us what our reactions were to the hazardous waste dump.

Ms. MIKULSKI. So you found out by a newspaper reporter calling you for your reactions.

Mr. THOMAS. We also found out one of the permits. They, the State, talks about the legal aspects of this thing, like a meeting we were having. They are saying everything has to be just so. So I would like to find out why one of the notices on the permits was put into an Annapolis paper. And the only way that we found it out was that one of the reporters on another paper called us and asked us did we know about the notice in the Annapolis paper.

Ms. MIKULSKI. So the notification appeared in a paper not normally subscribed to by your community.

Mr. THOMAS. But one of the notices. Now I understand later there was notification in the Sun paper. But one of the notices was that it was put into the Annapolis paper, and I drove approximately 20 to 22 miles to get this paper to make sure that it was correct. And it was correct.

Ms. MIKULSKI. When you found out about this, what did you do next? Who did you go to, and what was their response?

Mr. BLAGDMAN. The first thing we did——

Ms. MIKULSKI. Would you use the microphone, sir? Your voice is so gentle in a big room.

Mr. BLAGDMAN. First we called a meeting and we decided we would go to the State to check to see if it was true. So we called Mr. Griffin and found that it was true.

Ms. MIKULSKI. Did you call the Governor's office? How did you find Mr. Griffin?

Mr. BLAGDMAN. I cannot go into specifics. Our president, he knew——

Ms. MIKULSKI. Mr. Ali?

Ms. ALI. Yes.

Ms. MIKULSKI. Called the Governor's office?

Ms. ALI. I do not know who he called, but——

Ms. MIKULSKI. He ended up in the Governor's office.

Ms. ALI. Right. He talked to Mr. Griffin.

Ms. MIKULSKI. Who else did you talk to, and what were the responses? What did Mr. Griffin say to you?

Mr. BLAGDMAN. Then we decided to have meetings with the State so they could explain to us what was going on. Our first meeting was late December. The next was in February. Since then we have been meeting monthly with the State.

Ms. MIKULSKI. I toured Curtis Bay on August 12 on the American Recovery situation. Within a matter of a few days, really, before the ink was dry on our notetaking on that visit, the Hawkins Point facility was announced. So that was in August. But you did not have the meeting until December; is that right?

Mr. BLAGDMAN. November or December.

Ms. DARDEN. We had one in November and one the first day of December.

Ms. MIKULSKI. Of course, you have the minutes; is that correct?

Mr. THOMAS. Yes.

Ms. MIKULSKI. I would like to ask, if I may, if you have copies of those minutes that you had with the State and if you have copies for us.

Ms. DARDEN. I do not have them with me.

Ms. MIKULSKI. No, we understand that.

Then did you also raise questions of what it is they were going to do as well as issues around the enforcement of leaking drums, polluted air, and so on?

Mr. BLAGDMAN. Yes, we had a meeting among the association members. We came up with 22 questions which we sent to the representatives. We had those questions; we wanted answers to them. So far we only got a few answers.

Ms. MIKULSKI. Do you have with you a list of the 22 questions?

Mr. BLAGDMAN. Do you have any of them?

Ms. MIKULSKI. That is all right. We accept things that have been scribbled on. So you have not gotten those answers, right? Now you have spoken to John Griffin. Who else have you spoken to at the State of Maryland about your problems and concerns?

Mr. BLAGDMAN. I cannot name everybody. In fact, I do not know the names as well as the secretary and the president. But I have been to quite a few of the meetings.

Ms. MIKULSKI. Therefore all your meetings have been there. Do you feel you have gotten a response on both the questions that you have about the Hawkins Point expansion, and on enforcement?

Mr. BLAGDMAN. Well, certain questions they could answer. Most of the questions, he said that would be a legal aspect, or they would bring in the legal aspects. Well, we did not have a lawyer with us at the time. So I could not exactly tell you.

Ms. MIKULSKI. May I have a copy of these questions?

Mr. BLAGDMAN. You can have those.

Mr. THOMAS. It seems as though every time we would ask the State, I would ask them point blank about the other hazardous dumps around their proposed hazardous site, I asked them what would they do in case of leaching from the other hazardous dumps. And they continue to tell us that that is not their problem.

Ms. MIKULSKI. Who?

Mr. THOMAS. SCM, BFI, any landfill, whether it is closed or whether it is open, I would ask them what would happen if the leachates would come from these hazardous waste dumps. And they continue to tell me that they are not responsible for what they put into their landfill. But this is the State. And I cannot see why they are not responsible for any type of hazardous waste leachate from any landfill, private or otherwise.

Ms. MIKULSKI. They are responsible.

Mr. THOMAS. They tell us they are not. They are only responsible for the one they have not as yet put any hazardous waste into.

Ms. MIKULSKI. What? Show me what they said they are not responsible for.

Mr. THOMAS. They tell me they are only responsible for this area that they intend to use.

Ms. MIKULSKI. What did they tell you——

Mr. THOMAS. Nothing here. They are not responsible for any of this. This is the State telling us this. They are not responsible for anything but themselves in here.

Ms. MIKULSKI. Here is SCM and Glidden. Here is the city. Here is the city.

Mr. THOMAS. That is not their concern, so they tell us.

Ms. MIKULSKI. Did you contact Federal officials? Other than me?

Mr. THOMAS. No; I mean, we have been up to the State office building. We have looked through stacks and stacks of records. We have come up with hundreds of violations. We have been everyplace that we thought we could get help. And everywhere we went it was a blank wall. We are not chemists. We know very little—this is something new to us. Like I said before, we put our trust in the State, you know. And they have tricked us. They are not satisfied with us and accepting Glidden, and now they have put in this hazardous waste dump and are talking about bringing in American Recovery. It looks as though they are trying to kill us off. This is why we want to be relocated. But we have not come to any conclusions yet. We are just in the stages of negotiations.

Ms. MIKULSKI. In terms of the relocation, what has been offered to the community?

Mr. THOMAS. Nothing yet. I talked them into coming in and putting monitoring wells in. They were supposed to come in and monitor the people in the neighborhood. We have not heard anything about this.

They put in four monitoring wells. Let me tell you about the monitoring wells. They claimed the monitoring wells would tell you what you need to know about the contamination of ground water. I do not believe this is true. I will tell you why. The first three wells that they put in, the water levels were different than what they were at the time of taking the samples. Now in the fourth well, when they first put the well in, the welldiggers, they drove their well in the ground 63 feet, and they never touched any water at all. Then they moved their well approximately 20 to maybe 25 feet. And I was not there, but I was there when they dug the rest of the wells, but I was not there at the fourth, fifth well, really. When we went back to take the water samples they hit water at 3 feet; just 20 feet away they could not hit water at 63 feet. So there is no way they can tell me a monitoring well can tell you exactly what is in

the ground. It is just like when you are fishing. You have to be at the right place at the right time, or else you do not catch nothing worthwhile.

I went around personally, I made it a personal thing, when they dipped their sample out I had my jar, too. So we are going to get ours tested. And we want to see what we come up with. I hope it is pretty close.

Ms. MIKULSKI. What would have been helpful from the city, State, and Federal Government to have provided you during your battles in all these areas?

Mr. THOMAS. Well, really, when you look at this map up here, it ain't much nobody can do, you know. They are shoving us, I mean it has been shoved down our throats for the last two to three decades. You are talking 30 years, you see. And whether they know it or not, when you are this close to water, whether you are close to the water or not, Earth is just like a human being, you see. Earth, the only thing that she uses for her veins is water. And they run in every direction just like the veins in our bodies, you see. So when you put something like this in, it has to travel, say, in 20 to 30 years, it has to get to everyone, each and every person, you see. So like you ask, what could you have done? In a situation like this, it ain't much that nobody can do but to give us enough compensation to put us in comfortable homes like we have now. There is no solution for us. There is nothing that anyone can do, because it is impossible to clean up a hazardous waste dump. It is impossible. You could never do it. And that is all this is, is one big hazardous waste dump.

Ms. MIKULSKI. Do you feel that you have been offered adequate compensation?

Mr. THOMAS. Well, we have not been offered any type of compensation. They claim that they will come around. Thursday before last I think it was they said they would be around with appraisers to appraise the property within a week and a half. This is yet to happen, you know. But like I said, the only thing that I think the State owes us and the Federal Government owes us is a comfortable place to live. And I mean like there is no one there with mortgages or anything. These are all homeowners. Like I say, this is a unique neighborhood. The things that you used to find there you would never find anyplace else, and we have lost it. And the State allowed industry to come in and dominate this little black neighborhood, you see. And it is really not right. It is definitely not right. So we think that they owe us. They have put our life and our pursuit of happiness and anything dear to America, they have taken it away from us.

Ms. MIKULSKI. Mr. Thomas, I do not want to cut you off, but——

Mr. THOMAS. I need to be cut off.

Ms. MIKULSKI [continuing]. Could any members of the panel tell me if there have been any identifiable health problems in the community where there has been a consistent pattern where pretty much people have all been showing signs of the same kinds of illnesses?

Mr. THOMAS. Well, let us see. We have cancer in the neighborhood now. We have bladder conditions. We have glaucoma that we

never had. We have dysentery. Most of the diseases that you can mention, we have it now. But we did not have it before.

Ms. MIKULSKI. When did you first notice these patterns of illness emerging, like bladder?

Mr. THOMAS. Well, I would say not too long after the appearance of Glidden Paint and the SCM and the BFI's, you know, coming into the neighborhood. A lot of people think hazardous waste is only liquid. Hazardous waste is just as much in the air as it is anyplace else. It is more dangerous in the air. We are surrounded with all types of companies.

Ms. MIKULSKI. Let me then ask you a question, if I could. You have outlined the dust and so on. Let me come to the Glidden question. Do you feel that Glidden is just in terms of Glidden Paint, and the problems that you outlined, and also the Curtis Bay Improvement Association, the clouds over the area——

Mr. THOMAS. There is the proof right there in the corner.

Ms. MIKULSKI. Right. But my question is, do you feel that it could only be a workable, viable community if Glidden was not there? Or is it the fact that you question whether there has been any degree of enforcement to get them to operate properly?

Ms. ALI. Well, I feel that, I do not know about Glidden's. They have so many citations against them, but nothing is ever done. There are certain times Glidden will have this cloud that comes out of the smokestacks. And they say oh, well, that is steam, or that is something else. But they never give us a true picture of what is really coming out of these stacks. But we know it is something that affects the neighborhood. You have the streaks on your windows that do not go away no matter how much you wash your windows. In the mornings, you know, you can wash your car at night and in the morning you get up, you have this film all over your car. It is coming from someplace. But nobody seems to be able to tell us exactly what it is. The health department comes down and take samples. We never get the results of the samples.

Ms. MIKULSKI. I see. Well, I am going to now——

Mr. THOMAS. Just one more thing about these samples. A neighbor of mine, he called the health department about the specks that he had on his vehicles. So I went around the corner to where he lived. I said, I will be around. So I took my car around, too. So the health department man, he took the samples. I was telling him about some brochures I had. So he came around for the house. I said off the record, you being a State employee, I said are you allowed to give me, or any citizen, the results of these tests if they are hazardous? I said are you allowed to give us these tests? And he told me no, off of the record. He said the only way you can get them is on a legal basis. You will have to get them from a lawyer or some legal thing.

Ms. MIKULSKI. I thank you for your testimony. I am going to give you these questions back. What I would like you to do, I am going to hand these over to you as you return to your seats. I would like you to check off those questions that you did not get answers to and return them to me. I am going to thank you very much.

We are now going to hear from the Chesapeake Bay Foundation, but I am going to take a quick break myself for a few minutes.

[Brief recess.]

Ms. MIKULSKI. Will people please take their seats and we will resume the hearing.

We wish to welcome the Chesapeake Bay Foundation, which has had a history of environmental concerns, particularly as they relate to the Chesapeake Bay. So will you introduce yourself, identify yourself, and tell us something about the name, the purpose, and activities of the foundation.

**STATEMENT OF WILLIAM C. BAKER, EXECUTIVE DIRECTOR, CHESAPEAKE BAY FOUNDATION, ACCOMPANIED BY STUART LEHMAN, STAFF BIOLOGIST, AND RICHARD GARDNER, COUNSEL**

Mr. BAKER. My name is William C. Baker, and I am the executive director of the Chesapeake Bay Foundation [CBF]. I am accompanied by Stuart Lehman, a CBF staff biologist responsible for hazardous waste matters, and by Richard Gardner, who, prior to joining CBF, worked on hazardous waste issues in EPA's Office of General Counsel.

As you may know, CBF is a not-for-profit conservation organization which is completely privately funded and which is dedicated to the wise management of the resources of the Chesapeake Bay. The foundation has approximately 9,500 members and a full-time professional staff of 20. CBF's resource representation program becomes involved in administrative and other legal proceedings that may bear upon the environmental integrity of the Chesapeake Bay.

I would like to outline our general perspective on the broad issue of hazardous waste. The efforts to insure safe treatment, storage, and disposal have been severely tested here in the third district and elsewhere. A principal element in achieving protection of human health and the environment must be a strong commitment by EPA to carry out its statutory responsibilities. There is, however, no present evidence of such a commitment. There has been only partial promulgation of the standards and regulations necessary to implement the Resource Conservation and Recovery Act, which I will refer to as RCRA. Final land disposal regulations, the key to issuing stringent RCRA permits for the most troublesome and widespread disposal practices, have not yet been issued. They are, in fact, 4 years overdue, despite a succession of court-ordered deadlines. The interim regulations which are now in effect and which we are operating under have been subject to constant revision and relaxation as the Agency negotiates with industry. But most troubling of all, even these interim status standards are not now being enforced. Operators who conscientiously try to comply, therefore, are, ironically, the ones who are most penalized by RCRA.

One result of ineffective implementation is the burden placed on the States and the public. Maryland officials, who, on balance, have been striving to control hazardous wastes, lack the technical, scientific, and financial resources to act alone. Without stringent national standards, without vigorous Federal enforcement, and without the financial support of the Federal Government, the State is severely handicapped in its efforts to protect its citizens and environment.

The principal victims of EPA's failure of commitment are RCRA's intended beneficiaries, the public and the environment. In Baltimore city alone, nearly 176,000 tons of hazardous waste are generated each year. The treatment and storage alternatives presently available are limited—landfilling of wastes remains the most economical and most common method of disposal. The improper disposal of such wastes creates significant threats to ground water, drinking water, and surface waters. We are dealing with a public health problem of unknown dimensions, and there is no reason to be timid in our efforts to insure public health.

American Recovery Co. operates a hazardous waste treatment and recovery facility on Curtis Bay. The facility accepts and treats a large volume of industrial wastes, including waste acids and caustics, organic solvents, and sludges.

In the past several years American Recovery has had a history of operational problems, creating serious threats to residents of the Curtis Bay area and contaminating surface and ground waters. As many as 8,000 drums were stored on site, many of which were unlabeled. The facility experienced dike breaks, spills, leaking storage drums, flooding, and explosions. Ground water samples taken downgradient from the site by EPA indicated the presence of many inorganic pollutants and metals.

The department held a public hearing on the draft permit on October 6, 1980. We presented our concerns. The hearing officer recommended issuance of a permit containing the specific conditions recommended in the department's draft permit. On the issue of floodproofing the site, the hearing officer recommended that the permit stipulate that if DNR found that additional steps were necessary to adequately floodproof the site, the department would modify the permit.

Thereafter the department issued a final permit. Despite the hearing officer's recommendations, several of the special conditions that had been contained in the draft permit were deleted from the final permit. On July 27, 1981, CBF submitted a request for reconsideration of the permit based on what we perceived as inconsistencies between the permit and the department's regulations with respect to monitoring, stabilization of the earthen dikes, and inspection requirements. We also requested an explanation of the deletion of special conditions contained in the draft permit. On September 18, 1981, William Eichbaum, assistant secretary for environmental programs, responded to CBF's specific concerns, and denied our request for reconsideration. Many of our concerns, Mr. Eichbaum reported, were addressed in the company's operations manual which the company had submitted to the department after the issuance of the permit. We would like to note and emphasize that the department's practice of allowing permit applicants to submit operations manuals after the issuance of a permit effectively denies the public any opportunity to review and comment on many critical aspects, including inspection frequency, waste analysis plans, contingency plans, and the like.

Violations of the facility permit began showing up on State inspection reports by December 1981 and subsequently were found in January, February, March, and April 1982. Alleged violations include the storage of compressed gas bottles, unreported leaks in

waste tanks, combined storage of incompatible wastes, storage of unsealed drums, and rusting, deformed, and leaking waste storage containers.

It has only been recently, however, that the health department initiated enforcement action. On May 5 of this year, the department served a complaint and order against the facility to correct the conditions which lead to the violations and ordered American Recovery to undertake the floodproofing measures. The company was assessed civil penalties totaling $40,000 for violating the State's statutes and regulations.

In addition to working with the department of health and mental hygiene on the hazardous waste permit, CBF pursued the issue of floodproofing. American Recovery was altering the course of the stream which transects the property. Based on data submitted by American Recovery's consultant on the size of the upstream drainage area, DNR's water resources adminisration has concluded that the facility was exempt from DNR's floodplain regulations. We questioned this and, at our own expense, obtained outside engineering consultants to make an independent evaluation. Our consultant's report indicated that American Recovery's facility was not exempt, that it was in the flood plain, a conclusion which was subsequently accepted by DNR.

We have been informed, however, that floodproofing construction has not yet been completed. The various parties, including the State agencies, were initially uncertain about their responsibilities, and until the health department filed its recent complaint, neither agency was willing to take the initiative. As a result of this conclusion, threat of flooding at the site remains.

This review of these tangled proceedings illustrates the difficulties inherent in the regulatory process. It was a confusing time: new regulations were being issued by both EPA and the State; primary jurisdiction was being transferred from DNR to the department of health. It was exhausting and expensive for the public to participate in the process, but one wonders what would have happened without the spirited participation of local citizens, private organizations, and elected officials. Yet still, the question remains: Has the permit reduced the threat to human health and the environment created by the operations of American Recovery? We are sad to report that we think it has not.

Since the issuance of the permit, the facility still accepts unauthorized hazardous wastes, has deficiencies in its recordkeeping, and continues its practice of poor waste handling. In addition, American Recovery has not made major improvements to the grounds to keep toxic pollutants from entering the ground water and surface water—that is, paving roadways, building structures for sludge and drum storage, and floodproofing berms and walls. Another question remains. Will the recent enforcement action of the health department to clean up and have the necessary physical improvements implemented be successful? We do not know the answer to that question, but if it can be answered yes a firm precedent of State enforcement will be set.

Vigorous State enforcement is now vitally important due to EPA's unwillingness to enforce violations of RCRA. With respect to American Recovery, EPA has all along had authority to enforce

violations of its interim status standards since November of 1980. To our knowledge, EPA has not recently taken any interest in what was going on at the facility, and has initiated no action for violations of the Federal standards. The lackadaisical attitude of EPA toward this site will send a clear message to other hazardous waste operators in EPA's region III. We can therefore expect more of the same if the State does not seize the initiative.

In relation to Hawkins Point, I can report that the Maryland environmental service has proposed a significant expansion of the Hawkins Point landfill, and the State permitting agency, the department of health and mental hygiene, has issued notice of its tentative decision to issue the facility a permit. A public hearing is scheduled for next week and the department, after responding to public comments, will act on the permit application.

Until the completion of the process, it would be premature for us to comment on the adequacy of the proposed construction, design, and operation of the facility; these remain subject to consideration by the department. We have concerns about the landfill's ability to protect the ground and surface waters from further contamination, and we will be submitting detailed technical comments to the department at that hearing.

We would like to point out that the State agencies involved in this proceeding have been working responsibly and have been encouraging and even assisting public participation. MES in particular has been very helpful to us, providing us with all of the information we have requested, and meeting frequently with our staff. Even though we may disagree with MES in certain respects, I commend them for their efforts to work with the public.

EPA's failure to promulgate land disposal regulations has directly affected the process of developing new landfill capacity in the State of Maryland. The statute provides that no new treatment, storage, or disposal facilities may be constructed or operated without a RCRA permit. Such permits, however, cannot be written until EPA has promulgated final standards implementing section 3004 of RCRA. (Existing treatment, storage, and disposal facilities with interim status may continue to operate without a RCRA permit pending agency action on their permit application.) The failure to promulgate land disposal regulations, the final regulations, and the consequential moratorium on the construction of new facilities has had numerous effects.

First, the inability to construct new disposal facilities has exacerbated the capacity shortfall and has forced continued and increased reliance on existing and often inadequate facilities.

Second, because EPA considers expansion beyond 50 percent of existing capacity to be new construction, MES must take a stepwise approach to Hawkins Point. Rather than seeking approval of its entire, long-term plans for Hawkins Point, EPA regulations require MES to seek a permit now for only a part of the expansion.

Third, until EPA's land disposal regulations are effective, States with hazardous waste programs cannot receive full authorization to run the RCRA program. Land disposal facilities, such as Hawkins Point, that receive State permits at this time will not have final RCRA permits as required by RCRA section 3004. Therefore, facilities will have to apply for, and obtain, RCRA permits in the future.

Assuming that the design and operation of these facilities will satisfy the RCRA regulations, there is unnecessary duplication of effort.

Finally, and perhaps most importantly, MES in designing the Hawkins Point facility and health department in writing the terms and conditions of the permit do not have the benefit of national regulations reflecting the technical expertise of EPA and establishing those standards necessary to protect human health and the environment. Without in any way impugning the technical expertise available to MES and the health department, EPA has vast resources and expertise at its disposal. Congress assigned to EPA the responsibility to develop these standards. It has not done so. Maryland and other States in similar situations must use their limited resources to do not only their job, but EPA's, as well.

My review of the implementation of hazardous waste controls at two sites indicates that, to date, EPA has not positively contributed to the protection of human health and the environment. Their failure to act vigorously has severely strapped the ability of the State to carry out an effective program of control.

It is important to recognize that RCRA is a strong environmental statute which grants EPA broad authority to develop stringent protective standards and to enforce violations of these standards. The authority is there; what is lacking is the willingness of EPA to set standards that truly protect human health and the environment and then to prosecute those who violate such standards.

Straightforward implementation is the necessary first step, but more must follow. We must break our reliance on landfilling hazardous wastes. Implementation of national land disposal regulations will mean that landfills are safer, not that they are safe. Very little is being done to get away from simply burying our wastes except for improving the casket. New technologies for treating hazardous waste must be developed. Methods to reduce the volumes of waste must be found. Recycling of wastes and waste exchange programs must be perfected.

And, incineration of hazardous waste, at present perhaps the safest method of treatment and disposal, although there are other alternatives, must be encouraged. For example, Hawkins Point will be receiving wastes which could be incinerated, rather than buried. If Maryland forbade the landfilling of these wastes after a specified date, let us propose July 1, 1984, an incentive for developing incinerators would be created.

All of these techniques are ways to reduce the reliance on land disposal. Market forces alone will not, in all likelihood, foster a shift away from the use of landfills, which, even with the regulatory standards in place, will remain economically attractive. The environmental costs, however, demand that the Government do everything possible to only use landfills as the disposal practice of last resort.

We have seen the results of improper management when Kepone was allowed to run into the James River, or certainly on the highly publicized Love Canal problem. We will pay heavily for our mistakes in the future if we do not act wisely now. I believe we owe that much to future generations. If I might quote from Lester Brown's fine book entitled "Building a Sustainable Society," we

have not inherited the Earth from our parents, we are simply borrowing it from our children.

Thank you.

[Testimony resumes on p. 85.]

[Mr. Baker's prepared statement follows:]

# The Chesapeake Bay Foundation

TESTIMONY OF WILLIAM C. BAKER
EXECUTIVE DIRECTOR
CHESAPEAKE BAY FOUNDATION
BEFORE THE SUBCOMMITTEE ON TRANSPORTATION, COMMERCE, AND TOURISM
AT A CONGRESSIONAL OVERSIGHT HEARING ON
FEDERAL IMPLEMENTATION OF HAZARDOUS WASTE STATUTES

Thank you for the opportunity to testify before this Congressional Oversight Hearing of the Subcommittee on Transportation, Commerce, and Tourism. My name is William C. Baker, and I am the Executive Director of the Chesapeake Bay Foundation (CBF). I am accompanied by Stuart Lehman, a CBF staff biologist responsible for hazardous waste matters, and by Richard Gardner, who, prior to joining CBF, worked on hazardous waste issues in EPA's Office of General Counsel.

As you may know, CBF is a not-for-profit conservation organization dedicated to the wise management of the resources of the Chesapeake Bay. The Foundation has approximately 9,500 members and a full-time professional staff of 20. CBF's Resource Representation Program becomes involved in administrative and other legal proceedings that may bear upon the environmental integrity of the Chesapeake Bay. Although we tend to concentrate on NPDES and wetlands cases, major facilities siting, and sewage disposal, we have recently become involved in hazardous waste treatment and disposal issues which have included two cases here in the Third Congressional District -- American Recovery and Hawkins Point.

Before focussing on these, however, I would like to outline our general perspective on the broad issue of hazardous waste. The efforts to ensure safe treatment, storage and disposal have been severely tested here in the Third District and elsewhere. A principal element in achieving protection of human health and the environment must be a strong

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commitment by EPA to carry out its statutory responsibilities. There is, however, no present evidence of such a commitment. There has been only partial promulgation of the standards and regulations necessary to implement the Resource Conservation and Recovery Act (RCRA). Final land disposal regulations, the key to issuing stringent RCRA permits for the most troublesome and widespread disposal practices, have not yet been issued. They are, in fact, four years overdue, despite a succession of court-ordered deadlines. The interim regulations which are now in effect have been subject to constant revision and relaxation as the Agency negotiates with industry. But, most troubling of all, even these interim status standards are not being enforced. Operators who conscientiously try to comply, therefore, are, ironically, the ones who are most penalized by RCRA.

One result of ineffective implementation of RCRA is the burden placed on the states and the public. Maryland officials, who, on balance, have been striving to control hazardous wastes, lack the technical, scientific, and financial resources to act alone. Without stringent national standards, without vigorous federal enforcement, and without the financial support of the federal government, the state is severely handicapped in its efforts to protect its citizens and environment.

The principal victims of EPA's failure of commitment are RCRA's intended beneficiaries, the public and the environment. In Baltimore City alone, 176,000 tons of hazardous waste are generated each year, approximately 59% of the total generated in the state. The treatment and storage alternatives presently available are limited -- landfilling of wastes remains the most economical and most common method of disposal. The improper disposal of hazardous wastes creates significant threats to groundwater, drinking water, and surface waters. We are dealing with a public health problem of unknown dimensions and there is no reason to be

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timid in our efforts to ensure public health.

In addition, the failure to control hazardous wastes has threatened and continues to threaten the Chesapeake Bay. The economic benefit of a clean and productive Bay is vast, far greater than the immediate wholesale value of Bay fisheries. In fact, in estimating the loss of revenue caused by the loss of a fishery, economists often do not compute the dockside value of the fish themselves. That dollar amount is insignificant in relation to revenues generated by seafood markets and restaurants, handling and transportation of the product, equipment and vessel production and maintenance, support services, fuel and much more -- all of which would be lost if commercial and recreational fishing in the Bay disappeared. Such an analysis does not, of course, even begin to consider the real dollar value which must be afixed to a clean Chesapeake versus a polluted one in regard to tourism, waterfront real estate, and all forms of marine-related recreation.

American Recovery

American Recovery Company operates a hazardous waste treatment and recovery facility on Curtis Bay. The facility accepts and treats a large volume of industrial wastes, including waste acids and caustics, organic solvents, and sludges. In 1978, American Recovery received an Interim Facility Permit from the Department of Natural Resources (DNR) to store and treat hazardous wastes. This interim permit, which expired in 1979, was administratively extended until the issuance in July, 1981 of the Designated Hazardous Substance Facility Permit from the Department of Health and Mental Hygiene (DHMH).

In the past several years, American Recovery has had a history of operational problems, creating serious threats to residents of the Curtis

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Bay area and contaminating surface and ground waters. As many as 8,000 drums were stored on site, many of which were unlabeled. The facility experienced dike breaks, spills, leaking storage drums, flooding, and explosions. Groundwater samples taken downgradient from the site by EPA indicated the presence of many inorganic pollutants and metals.

Because of the severity of the threat to human health and the environment, we decided to become involved in the proceedings that lead to the issuance of the facility permit. In our comments on the Health Department's draft permit, we addressed the following issues: (a) the adequacy of the floodproofing plans for the facility; (b) inspection requirements for all elements of the treatment facility; (c) the development of a groundwater assessment and monitoring plan; (d) financial responsibility requirements; and (e) a variety of other specific measures.

The Department held a public hearing on the draft permit on October 6, 1980. We presented our concerns. The Hearing Officer recommended issuance of a permit containing the specific conditions recommended in the Department's draft permit. On the issue of floodproofing the site, the Hearing Officer recommended that the permit stipulate that if DNR found that additional steps were necessary to adequately floodproof the site, the Department would modify the permit.

Thereafter the Department issued a final permit. Despite the Hearing Officer's recommendations, several of the special conditions that had been contained in the draft permit were deleted from the final permit. On July 27, 1981, CBF submitted a request for reconsideration of the permit based on what we perceived as inconsistencies between the permit and the Department's regulations with respect to monitoring, stabilization of the earthen dikes, and inspection requirements. We also requested an explanation of the deletion of special conditions contained in the draft permit. On September 18, 1981,

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William Eichbaum, Assistant Secretary of the Department, responded to CBF's specific concerns, and denied our request for reconsideration. Many of CBF's specific concerns, Mr. Eichbaum reported, were addressed in the Company's Operations Manual which the Company had submitted to the Department after the issuance of the permit. We would like to note that the Department's practice of allowing permit applicants to submit Operations Manuals after the issuance of a permit effectively denies the public any opportunity to review and comment on many critical aspects, including e.g. inspection frequency, waste analysis plans, contingency plans and the like.

Since the issuance of the permit on June 26, 1981, handling of wastes at the facility has not significantly improved. In October of 1981, representatives of the Department and American Recovery met to clarify handling procedures and to add requirements to the company's Operations Manual. A letter from the Department, dated October 28, 1981, not only required more precise reporting of day-to-day procedures but, also, modified the June 26, 1981 permit to require the completion of a concrete storage area for drums and sludges by December 19, 1981. The drum storage area has yet to be built.

Violations of the facility permit began showing up on state inspection reports by December of 1981 and subsequently were found in January, February, March, and April of 1982. These violations include: (1) storage of compressed gas bottles; (2) unreported leaks in waste tanks; (3) combined storage of incompatible wastes; (4) storage of unsealed drums; and (5) rusting, deformed, and leaking waste storage containers.

Only recently, the Health Department initiated enforcement action. On May 5, 1982, the Department served a Complaint and Order against the facility to correct the conditions which lead to the violations and ordered

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American Recovery to undertake the floodproofing measures. In addition, the company was assessed civil penalties totalling $40,000 for violating the State's statutes and regulations.

In addition to working with the Department of Health and Mental Hygiene on the hazardous waste permit, CBF pursued the issue of floodproofing. American Recovery was altering the course of the stream which transects the property. Based on data submitted by American Recovery's consultant on the size of the upstream drainage area, DNR's Water Resources Administration had concluded that the facility was exempt from DNR's floodplain regulations. We questioned this determination and, at our own expense, obtained outside engineering consultants to make an independent evaluation. Our consultant's report indicated that American Recovery's facility was not exempt, a conclusion subsequently accepted by DNR.

Thereafter, DNR issued public notice of a proposed Waterway Construction Permit. On May 26, 1981, we submitted detailed comments on the adequacy of the proposed permit and requested a public hearing. On August 7, 1981, DNR issued the permit to allow American Recovery to initiate floodproofing work, and on August 13, 1981 responded to our comments. In that response, DNR stated that stream channel improvements on the American Recovery site and upstream had been considered (and were acceptable to the upstream owner, E & M Machinery) but Gambel Industries (the owner of the American Recovery property) refused to participate. DNR noted that it lacked authority to compel Gambel Industries to undertake this project.

Subsequent to the issuance of the Waterway Construction Permit to American Recovery, DNR issued a Waterway Construction Permit to E & M Machinery to undertake stream channel improvements. CBF also participated in this process, pointing out that the capacity of the proposed work was insufficient to handle a 100-year storm and that the velocity of stream

flows would require an improved stream bed around the American Recovery facility. Although DNR acknowledged the validity of our concerns, it did not incorporate such provisions in the permit to E & M Machinery issued in November of 1981. DNR did alert E & M Machinery that subsequent modification of the permit might be necessary to address the problem of increased stream velocities.

We have been informed that floodproofing construction has not been completed. The various parties, including the state agencies, were initially uncertain about their responsibilities and, until the Health Department filed its recent complaint, neither agency was willing to take the initiative. As a result, the threat of flooding at the site remains.

This review of these tangled proceedings illustrates the difficulties inherent in the regulatory process. It was a confusing time: new regulations were being issued by both EPA and the state; primary jurisdiction was being transferred from DNR to the Department of Health. It was exhausting and expensive for the public to participate in the process, but one wonders what would have happened without the spirited participation of local citizens, private organizations, and elected officials. And yet, still, the question remains: Has the permit reduced the threat to human health and the environment created by the operations of American Recovery?

We think that, to date, it has not. Since the issuance of the permit, the facility still accepts unauthorized hazardous wastes, has deficiencies in its record keeping, and continues its practice of poor waste handling. In addition, American Recovery has not made major improvements to the grounds to keep toxic pollutants from entering the groundwater and surface water (e.g., paving roadways, building structures for sludge and drum storage, and floodproofing berms and walls). Another question remains. Will the recent enforcement action of the Health Department to clean-up and have

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the necessary physical improvements implemented be successful? If so, a firm precedent of state enforcement will be set.

Vigorous state enforcement is now vitally important due to EPA's unwillingness to enforce violations of RCRA. With respect to American Recovery, EPA has had authority to enforce violations of its interim status standards since November of 1980. To our knowledge, EPA has not recently taken any interest in what was going on at the facility and has initiated no action for violations of the federal standards. The lackadaisical attitude of EPA towards this site will send a clear message to other hazardous waste operators in EPA's Region III. We can therefore expect more of the same if the state does not seize the initiative.

Proposed Hawkins Point Landfill

The Maryland Environmental Service (M.E.S.) has proposed a significant expansion of the Hawkins Point landfill, and the state permitting agency, the Department of Health and Mental Hygiene, has issued notice of its tentative decision to issue the facility a permit. A public hearing is scheduled for next week and the Department, after responding to public comments, will act on the permit application.

Until the completion of the process, it would be premature for us to comment on the adequacy of the proposed construction, design, and operation of the facility; these remain subject to consideration by the Department. We have some concerns about the landfill's ability to protect the ground and surface waters from further contamination, and we will be submitting detailed technical comments to the Department at that hearing.

We would like to point out that the state agencies involved in this proceeding have been working responsibly and have been encouraging and even assisting public participation. M.E.S. in particular has been very

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helpful to us, providing us with all of the information we have requested and meeting frequently with our staff. Even though we may disagree with M.E.S. in certain respects, I commend them for their efforts to work with the public.

EPA's failure to promulgate land disposal regulations has directly affected the process of developing new landfill capacity in the state of Maryland. The statute provides that no new treatment, storage, or disposal facilities may be constructed or operated without a RCRA permit. ~~RCRA~~ Such permits, however, cannot be written until EPA has promulgated final standards implementing Section 3004 of RCRA. (Existing treatment, storage, and disposal facilities with "interim status" may continue to operate without a RCRA permit pending agency action on their permit application.) The failure to promulgate land disposal regulations, the final regulations, and the consequential moratorium on the construction of new facilities has had numerous effects.

First, the inability to construct new disposal facilities has exacerbated the capacity shortfall and has forced continued and increased reliance on existing and often inadequate facilities. With specific reference to Hawkins Point, it has skewed, at least in part, Maryland's Hazardous Waste Siting Board's process to identify acceptable locations for new facilities. With the anticipated closing of Browning Ferris' Solley Road facility -- the only general hazardous waste landfill presently operating in the state -- the state had to find an existing landfill that could be rapidly expanded.

Second, because EPA considers expansion beyond 50% of existing capacity to be new construction, M.E.S. must take a step-wise approach to Hawkins Point. Rather than seeking approval of its entire, long-term plans for Hawkins Point, EPA regulations require M.E.S. to seek a permit now for only a part of the expansion.[14] (This may in itself not be a bad thing. In subsequent permit proceedings for future expansion, the state and the public will have a second look at the design and operation of the facility. The

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point is that this result is based not on policy considerations, but rather because of EPA's regulatory paralysis.)

Third, until EPA's land disposal regulations are effective, states with hazardous waste programs cannot receive full authorization to run the RCRA program. Land disposal facilities, such as Hawkins Point, that receive state permits at this time will not have final RCRA permits as required by RCRA Section 3004. ~~Those~~ Therefore, facilities will have to apply for, and obtain, RCRA permits in the future. Assuming that the design and operation of these facilities will satisfy the RCRA regulations, there is unnecessary duplication of effort.

Finally, and perhaps most importantly, M.E.S. in designing the Hawkins Point facility and ~~DHMH~~ Health Dept in writing the terms and conditions of the permit do not have the benefit of national regulations reflecting the technical expertise of EPA and establishing those standards necessary to protect human health and the environment. Without in any way impugning the technical expertise available to M.E.S. and the Health Department, EPA has vast resources and expertise at its disposal. Congress assigned to EPA the responsibility to develop these standards. It has not done so. Maryland and other states in similar situations must use their limited resources to do not only their job, but also EPA's, as well.

Conclusion and Recommendations

~~This~~ My review of the implementation of hazardous waste controls at two sites indicates that, to date, EPA has not positively contributed to the protection of human health and the environment. ~~EPA's~~ Their failure to act vigorously has severely strapped the ability of the state to carry out an effective program of control.

It is important to recognize that RCRA is a strong environmental statute which grants EPA broad authority to develop stringent protective

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standards and to enforce violations of these standards. The authority is there; what is lacking is the willingness of EPA to set standards that truly protect human health and the environment and then to prosecute those who violate such standards.

Straightforward implementation is the necessary first step, but more must follow may be necessary. We must break our reliance on landfilling hazardous wastes. Implementation of national land disposal regulations will mean that landfills are safer, not that they are safe. Very little is being done to get away from simply burying our wastes except for improving the casket. New technologies for treating hazardous waste must be developed. Methods to reduce the volumes of hazardous waste generated must be found. Recycling of wastes and waste exchange programs must be developed perfected.

And, incineration of hazardous waste, at present perhaps the safest method of treatment and disposal, must be encouraged. For example, Hawkins Point will be receiving wastes which could be incinerated, rather than buried. If Maryland forbade the landfilling of these wastes after a specified date, e.g. 1984, a real incentive for developing incinerators would be created.

All of these techniques are ways to reduce the reliance on land disposal. Market forces alone will not, in all likelihood, foster a shift away from the use of landfills, which, even with the regulatory standards in place, will remain economically attractive. The environmental costs, however, demand that the government do everything possible to only use landfills as the disposal practice of last resort.

We have seen the results of improper management when Kepone was allowed to run into the James River. We will pay heavily for our mistakes in the future if we do not act wisely now. I believe we owe that much to future generations. As Lester Brown notes in his fine book entitled Building a Sustainable Society, we have not inherited the earth from our parents, we are simply borrowing it from our children.

Thank you.

Ms. MIKULSKI. Thank you very much.

Does anybody else accompanying you wish to comment or add to what has been said?

Mr. BAKER. They will be available to answer any questions, as they have been working primarily on these cases.

Ms. MIKULSKI. We would like to thank you for the thoroughness of your testimony. Some of the material that you have presented is indeed new to us and a blockbuster, particularly the deletion of certain permit recommendations and so on. In the American Recovery situation, you raised certain very important issues about the permits. Do you feel there is a problem with the legislation on the permit process, or was it with the implementation?

Mr. BAKER. I believe my comment would be that the legislation is adequate. It is the implementation that is a problem.

Mr. GARDNER. I would agree with that. It is a lengthy process. The permit expired in 1979. It was only in 1981 that a permit was issued, and even that reserved until subsequent submission of the closure plan, and also the operations manual.

Ms. MIKULSKI. In your experience working with other hazardous disposal instruments, whether they are landfills, publicly owned, privately owned, recycling technology, has it been your experience that operation procedure manuals are submitted as part of the permit process? In other words, whoever is going to operate the hazardous waste facility says, "Here is our operations manual; this shows what it is we are going to do here and how it is we are going to do it"?

Mr. LEHMAN. In many cases the operations manual is included as a requirement of the permit. So it is being issued through the permit process, but after the time that the public hearing is held. And even then when an operations manual is submitted, following up and making sure that the procedures outlined in the manual are followed seems to be a problem, as is evidenced by the recent State case against American Recovery. A lot of those violations mentioned in there regarding storage of drums and so forth are listed as procedures in the operations manual.

Mr. BAKER. We will ask and discuss problems that have been in the past, for instance, the leaking of drums, inadequate storage, things like that. With a new permit we will get the response that, well, these are in the operations manual, so they would not happen any more. Case in point. They do.

Ms. MIKULSKI. I want to just stick with American Recovery; then we will come back to Hawkins Point. I am going to pursue that. Then Mr. Fortuna has a question.

American Recovery as you know is being proposed for relocation. Whether that happens or not is still unknown. It has been proposed that American Recovery move over to the Hawkins Point area. There is some question about where. That puts it pretty close to the old Patapsco River. As scientists and lawyers working in this area, the technical experts that should be participating in the process, what do you think about that? What do you think the impact would be to take a facility that handles the kind of materials that it does, and bring it over that close to the river?

Mr. LEHMAN. We have the same sort of worries now with the present location; only several hundred feet downstream is Curtis

Bay. There is a stream actually running through the property. One advantage we do see is that the company can get away from some of its structural problems, like we mentioned, the floodproofing and flood plain problem that exists there now.

Ms. MIKULSKI. Mr. Fortuna.

Mr. FORTUNA. Yes, the witness from American Recovery was not all too familiar with the standards that apply to those types of facilities. I was wondering if one of you gentlemen could address the standards that currently apply to what are generally referred to as recycling facilities.

Mr. BAKER. We noticed that also.

Mr. GARDNER. With particular reference to the testimony, I want to correct two statements he made which I do not believe are correct. One, he said that the explosions occurred under the old law, and therefore the fact that the drums were not labeled and the fact——

Mr. FORTUNA. Before November 19?

Mr. GARDNER. Yes. The Baltimore Sun reported last June 1981, after the interim status standards became effective there was an explosion. The interim status standards would require the owner and operator of a facility to undergo a waste analysis, maintain proper storage, and prevent mixing of incompatible materials.

Mr. FORTUNA. There are apparent violations in that regard?

Mr. GARDNER. Again, I am not privy to all the facts, but the interim status standards were in effect, and the explosion occurred under status standards designed to prevent explosions. He made another statement which indicated American Recovery was operating under a Federal interim status permit. That gave the impression that EPA had reviewed the facility and issued a permit. Interim status does not work that way. You satisfy two notification requirements and be in existence. You are essentially grandfathered until EPA or the State——

Mr. FORTUNA. You simply say we are here, then the burden is on EPA during that period to come in and see whether you are in compliance?

Mr. GARDNER. Right. There is no issuance of a Federal permit.

Mr. FORTUNA. The gentleman also mentioned they were using a number of the elements in their recovery process to supplement their fuels, I believe making an apparent reference to their burning of the material in boilers. Are you familiar with that or any aspect of that in that regard?

Mr. LEHMAN. Yes, it is my understanding that certain organic liquids and solvents, after the sludges are allowed to settle out of them, are being used to supplement other oils.

Mr. FORTUNA. Are there any current limitations on that practice under current RCRA limitations?

Mr. LEHMAN. I am not familiar with that. I think there are restrictions on the amount of halogen or chlorine composition of this waste.

Mr. FORTUNA. For the record, at present the burning of wastes for purposes of recovering energy, it is virtually unregulated, although the authorities are available. So it would appear American Recovery has a number of potential regulatory loopholes under which to operate.

Mr. GARDNER. Yes, as you know, recycling is fairly complicated and truncated. Beneficial uses of unlisted wastes are essentially exempt from regulation.

Mr. FORTUNA. As was the chrome cap on the Monument landfill. That was a beneficial use, too.

Mr. GARDNER. I suppose it was. The transportation and storage of listed wastes which are to be recycled are regulated.

Mr. FORTUNA. One last question. Could you comment or discuss the current regulations as they govern expansions under interim status, the 122.23 regulation?

Mr. GARDNER. Just very briefly, they are complicated. I believe it limits to 50 percent expansion with notification to the EPA region. I think that also covers the acceptance of new wastes which were not identified in the part A application required on November 19.

Mr. FORTUNA. Are you familiar at all with the proposed settlement agreement in the NRDC case?

Mr. GARDNER. I reviewed 1 or 2 months ago an early supplement paper. But not familiar with each of its terms.

Mr. FORTUNA. Thank you.

Ms. MIKULSKI. I want to move on to the Hawkins Point situation. But before we leave American Recovery, I do want to comment a little bit about the interim status permit situation. Our committee in Congress is deeply concerned about the failure of the EPA to move aggressively in promulgating the final standards that would deal with construction. We are very disturbed by the GAO report that indicated that interim status permits in no way dealt with the issue of health hazards or danger to either workers, or when these facilities were located close to nearby communities, to citizens, or to the environment which would have larger repercussions in food chains, as an example. What we found was, of course, that the interim status permit was just basically a few administrative procedures, and according to which, as you indicated, you only had to declare you were going to have this stuff coming to your place, and not much else. And all interim status is simply a declaration that you exist and are handling this material, but in no way provides sanctions for it, approvals of it.

It has given our committee a great deal of pause. We hope to be through our oversight both at committee hearings like this and field hearings, and in terms of national hearings, and to move on them, because it is now estimated with the current cuts in the EPA budget, and the approach that the administration has taken on this, that we could be 8 to 10 years away as a minimum on promulgating final standards.

In the meantime, the damage is done. As you said, Mr. Baker, in quoting Mr. Brown's comments, in 8 to 10 years you cannot roll back that kind of damage, whether it is to Curtis Bay or whether it is to Hawkins Point community or whether it is to the Chesapeake Bay. So, I just wanted you to know that we share that same frustration in terms of the Federal implementation of RCRA as well as what is happening at other levels.

I would like now to move on to the Hawkins Point situation, and would ask you, particularly you, Mr. Lehman, if you could, or others who would like to comment, could you describe for us the character of the Hawkins Point site in terms of its geology, in

terms of its hydrology, in terms of its clay permeability, and so on? Not particularly their—the State's—plan, but have you made site visits?

Mr. LEHMAN. I have scheduled a site visit. I have not been out there as yet. From looking at the information and reports available on that area, there is a complex hydrology and geology. A lot of soils and clays have been imported into the area. At one time there was a creek and large lagoon in the area. Past movement of earth and digging and so forth has created a very unpredictable ground water regime in the area. This is illustrated by the Hawkins Point panel up here before. You can drill in one area and find ground water at one depth and, in another area, find ground water at another depth. So there is some uncertainty as to where ground water is under the site and which way it is flowing. Therefore the site design has some interesting requirements, that areas be dewatered by horizontal piping; that a ground water interceptor ditch be put in around surrounding the site because of the uncertainties as to which way the ground water is moving and to keep it out of the landfill.

Ms. MIKULSKI. As a scientist concerned about environmental protection as you are, and knowing the Hawkins Point site, just based on what you have said, is it your opinion that the Hawkins Point area is so constituted in its geology and hydrology as to be a long-term, safe containment area of hazardous and toxic wastes? In other words, do you think the dump ought to go there like this?

Mr. LEHMAN. Well, I think it is possible. The problem with the site, or the—just in general terms, it is located right on the Patapsco River. The sedimentation lagoons will be exposed to waters from major storms. And just nearness to the Patapsco leaves no room for error and increases the amount of environmental safeguards that would need to go into it to make it a successful landfill, although it is certainly possible.

Ms. MIKULSKI. In your most recent newsletter you had an article in there about the Hawkins Point situation. As I recall, and I am paraphrasing now, that you had, as I recall, the newsletter expressed serious reservation about the Hawkins Point facility, because you said because of its 150-foot proximity to the Patapsco River. And I believe you indicated that for it to be a safe and successful operation, these are my words paraphrasing, that it would have to work 100 percent perfectly, 100 percent, all of the time. Am I paraphrasing you accurately, and would you like to comment on that? You have got your newsletter there.

Mr. BAKER. I think if you were asking it be a perfect landfill, the answer to that question would be there is no perfect landfill. We believe that we can make comments and suggestions to greatly improve, or to do a good deal to make it a good landfill. I will defer to the real experts, the lawyer and the biologist. But that is the way we perceive our involvement in this case. We are not at the present anticipating, and this will depend on the actions in the hearings and the permit proceedings as they go on, but we are not anticipating at present that we would recommend denying the permit because of the location.

Ms. MIKULSKI. I see. I think your testimony was more than adequate. I do have this area of questions, though. You talked about

the spirited participation of citizens, improvement associations, public interest groups such as yours that kind of keep the system on track. Based on your experience with this, because we are trying to look at systemic issues and larger issues in addition to these case studies, what do you think is needed on behalf of the Government to make available to citizens, what is needed from either the Federal Government, the State, local or communities in order to enable them to effectively participate in this process and to have their interest safeguarded?

Mr. BAKER. I would just like to preface the answer to that by saying I am quite humbled to appear here after the testimony that has been presented. I think the sort of involvement and concern of the citizens here today is really quite something. We all too often think perhaps, or the experts or Federal or State or local agencies may think that citizen involvement is a problem because citizens obviously cannot be the experts that they may need to be to comment on a highly sophisticated level, and they should not be expected to. Perhaps what may come out of these hearings would be a recommendation, or a charge, or even an interest on the part of the agencies, local, State, Federal, to be more receptive to helping citizens voice their concerns, and to incorporate their concerns into the actions of the agency. That is perhaps not going to be simple. You may not be able to say, "You write down your concerns, and we will take them" or, "You tell us how to do it and we will do it that way."

But they have to perhaps be able to help them more and interpret their concerns in a way that provides that trust between the citizens and the Government. Right now I think that is severely lacking.

Ms. MIKULSKI. You were present when Mr. Kaufman and I were engaging in a dialog. And this seems to be a national pattern, where citizens just do not feel that they have any place to go. They are walking around with their own little jars taking their own little samples. As one person indicated, she does not have her own personal laboratory, and so on. Do you feel that the Federal Government should establish some type of ombudsman or use its technical assistance panels in a different way so that the citizens could enter into the system and have a kind of a hearing of last resort, or someplace to go when they do not seem to be getting anywhere anywhere else?

Mr. BAKER. To say no to that would be like saying I am against motherhood and apple pie and America. Yes, it seems like a good suggestion.

Ms. MIKULSKI. Do you have any other suggestions?

Mr. BAKER. I really do not know, other than an effort by the Agency personnel to encourage citizen involvement and to—perhaps that is the wrong word, encourage citizen involvement, because that is very difficult. But to encourage their people to be more helpful to citizens in explaining what is happening in a specific case and how the Agency is dealing with it, and to try and translate some of the Agency's language in the permit and enforcement action and so forth down into lay language. Dick was in EPA and he may have some comments on your suggestion. I do not know.

Ms. MIKULSKI. That is just one approach. I would welcome any others.

Mr. GARDNER. I would hate to come out against apple pie. I have some ambivalence about an ombudsman. It would have to be granted the independence and technical resources to act effectively. At least when I was at the agency I had the sense that the vast majority of employees there were dedicated public officials who were striving to protect the environment. It was a complicated bureaucracy; it was tough to find the right person. But there was someone there who was concerned. It may be that setting up an ombudsman office to act as the lightning rod and catalyst for citizens' complaints and interests would be a good idea.

Ms. MIKULSKI. This is an enormous struggle. It has been my observation even here in Maryland that citizens, whether it is about a landfill, hazardous waste disposal, or the other problems they face, are continually told that if they do not get a lawyer, they are lost. Your organization is unique; it has counsel, scientists, working with and for it. What I was struck by and even just reviewing recent newspaper accounts, that whether you are Monument Street, and feel the need to retain counsel, whether you are rich, affluent Montgomery County on the Laytonsville problem, they, the citizens themselves felt that they had to go and retain counsel, retain engineers to come up with their own critique to do that.

Now not every community group can have the wherewithal resources to hire private counsel, private engineering, and so on to deal with their own government. I mean, what we are talking about here is not where the people have taken on big business; it is the people taking on their own government who is supposed to protect them. This is what I am struggling with. I do not think that American citizens should have to go out and hire their own lawyers, their own biologists, their own engineers, to find out what in the heck is going to happen to them and how they need to protect themselves. I mean I just feel very passionately about that, and I am trying to figure out how to do that. So if you have got any ideas, they are more than welcome.

Mr. GARDNER. We would like to think about it and submit suggestions to you.

Ms. MIKULSKI. Good. I would like to thank you for your testimony, and we will now move on to the government witnesses.

Mr. BAKER. Thank you very much.

Ms. MIKULSKI. We are going to combine EPA and State and ask all representatives of the Federal EPA and all representatives of the State of Maryland to come forth and take as many chairs as they need.

I would like to welcome the State of Maryland and Environmental Protection Agency. We would like you to introduce yourselves one by one, starting with you, sir, and going around the table. We would like to know your name, title, scope of responsibility and education.

Mr. EISENBERG. I am Dr. Max Eisenberg, director of science and environmental health within the Office of Environmental Programs in the health department. I have a bachelor's degree in chemistry, a master's from the University of Massachusetts at Am-

herst, and doctorate in chemistry as well from Northeast University in Boston.

Ms. MIKULSKI. What do you do there?

Mr. EISENBERG. I am director of science and environmental health—I am primarily responsible for the health components, environmental health components and advisory to the three programmatic areas which includes air, water and waste management.

Mr. NELSON. My name is Ronald Nelson. I am a director of the waste management administration for the Office of Environmental Programs. I have a B.S. in environmental health. My program area of involvement is permitting an enforcement of all industrial waste activities where hazardous or nonhazardous, municipal solid waste and sewage sludge activities within the Department of Health and Mental Hygiene, two primary functions, technical services, which is the permitting sections, permit review sections and enforcement program.

Ms. MIKULSKI. Mr. Nelson, how long have you had that responsibility?

Mr. NELSON. I have had the responsibility for approximately 18 months.

Ms. MIKULSKI. Have you been in State government only 18 months?

Mr. NELSON. No, I have not. I have been in State government approximately 16 years.

Ms. MIKULSKI. What did you do prior to these 18 months?

Mr. NELSON. I began with the Department of Health in local government, local health departments in Wicomico County, working in all areas of environmental health. I came to the State, primarily in the division of food control when I first came to the State. I formed within that bureau of food and drug a division of compliance enforcement and evaluation for that bureau. Later became director of the Bureau of Food and Drugs. Later became director of the community health program at which time I assumed in addition to a food and drug and radiation control responsibilities, also the responsibility for solid waste. And after consolidation, I moved into the position to establish waste management administration.

Ms. MIKULSKI. Were you a Health Department employee or Department of Natural Resources?

Mr. NELSON. Health employee. All along.

Mr. EICHBAUM. Bill Eichbaum, assistant secretary for environmental programs in the Maryland Department of Health. I am a lawyer by training. Our program responsibilities include not only hazardous and solid waste, but all of the other air, water and community health programs administered in the State.

Ms. MIKULSKI. How long have you been here?

Mr. EICHBAUM. I have been with the State of Maryland since June 1980. Prior to that I have been 10 years of experience with the Federal Government and with State government and environmental control programs.

Mr. MCKEWEN. I am Tom McKewen, director of Maryland Environmental Services. I have a bachelor's in civil and master's in sanitary engineering, both from Johns Hopkins University. Started with the State of Maryland 30 years ago, I think 3 weeks from today. Was with the Health Department 18 years in various capaci-

ties. Have been director of the Maryland Environmental Services since its inception in 1970.

Ms. MIKULSKI. Tell me what you have done since 1970, Mr. McKewen. Was that the Maryland Environmental Service?

Mr. MCKEWEN. Yes.

Ms. MIKULSKI. That is the operating arm of the——

Mr. MCKEWEN. State utility. We are attached to the Department of Natural Resources. We are not a regulatory agency. We are involved in such things as operating sewage treatment plants, water plants, sludge composting, landfills, and recently hazardous wastes.

Ms. MIKULSKI. When did the Department assume that responsibility?

Mr. EICHBAUM. Hazardous wastes? Well, the Department of Natural Resources assumed responsibility for regulatory control in 1977, I believe. The responsibility for hazardous waste siting goes back to the Hazardous Waste Siting Act of 1980. So we have been actively involved in siting for approximately, now, 2 years. The Hawkins Point project itself was conceived last year. We have been operating a hazardous waste landfill, however, I should add, at Hawkins Point for Port Authority and Allied Chemical for approximately 2 years.

Mr. GRIFFIN. My name is John R. Griffin. I am a staff assistant to the Governor of Maryland Harry Hughes. I have a bachelor's degree in psychology. I have a master's degree in social work. And I am a frustrated law student. I came to the Governor's employ in 1978 where I had been generally responsible for a lot of troubleshooting, specifically responsible for staffing for him two departments, two principal departments of State government: The Department of Natural Resources, which has occasioned my relationship with Mr. McKewen in MES, and the Department of Economic and Community Development.

Ms. MIKULSKI. Have you been involved in anything environmental prior to this?

Mr. GRIFFIN. No. Actually, it was not until approximately 1½ years ago, following departure of another staff member who was previously handling that for the government that I assumed that person's duties. So other than being generally familiar with it having worked in local governments prior to coming to the State, no.

Ms. MIKULSKI. But you are the Governor's troubleshooter, one of the Governor's troubleshooters?

Mr. GRIFFIN. I think that is a fairly accurate statement, yes, ma'am.

Mr. BIBKO. My name is Peter Bibko. I was appointed by Anne Gorsuch as one of the 10 regional administrators around the country last September 1, I believe my appointment started. I am responsible for implementing and enforcing Federal EPA programs within region III, which, of course, includes the State of Maryland.

I have a bachelor of science degree in biology from Louisiana State University, a master's degree in environmental health engineering from the Civil Engineering School at NYU, a doctoral degree in aquatic ecology on which I have gotten everything out of the way except final submission of the thesis, which has been completed, and aquatic ecology having to do with effects of stresses,

chemical stresses on striped bass, ichthyoplankton, eggs and larvae. I have a law degree, also a frustrated lawyer of sorts, from Duquesne University. And I have been involved in environmental regulation for some 12 to 14 years, both in a technical capacity and as an environmental lawyer.

Ms. MIKULSKI. The smile that you saw, Mr. Bibko, when you were describing your status as a Ph. D. candidate is only one of sympathy because I think communities are often replete with people who have completed all their course work but there is still those last 83 pages before the time runs out. That was just a sympathetic smile. Are you 83 pages and 17 footnotes away?

Mr. BIBKO. 400-something pages, Congresswoman.

Ms. MIKULSKI. After this you will be able to write a book.

Mr. VILLA. I am Orterio Villa, Director of the Central Regional Laboratory in Annapolis, Md. I have a bachelor's degree in chemistry. Primarily our task in Annapolis is to provide field and analytical support to the various programs in the region. As such we conduct studies, analyze data, submit reports to the region.

Ms. MIKULSKI. Mr. Villa, I am sorry, did you say you were an engineer?

Mr. VILLA. I am a chemist.

Mr. WASSERSUG. I am Steven R. Wassersug, Director of the Air and Waste Management Division in region III in the Philadelphia regional office and responsible for the air and general RCRA and superfund related type programs. Also, the pesticides and radiation area as well. I have been with the EPA since its inception. I was director of enforcement prior to this assignment for about 5 years, also in the Philadelphia regional office. I have been in the environmental field for about 17, 18 years now. And my training is a bachelor of science and master of science degree, generally environmental sciences, some engineering, at the University of Massachusetts, Worcester Polytech, and some postgraduate work as well.

Ms. MIKULSKI. Could you spell your name for me?

Mr. WASSERSUG. W-a-s-s-e-r-s-u-g, translated "water train" in German.

Mr. LASKOWSKI. My name is Stan Laskowski, L-a-s-k-o-w-s-k-i——

Ms. MIKULSKI. If I don't know how to spell that——

Mr. LASKOWSKI. I am Director of the Environmental Services Division in region III, responsible for all field and lab activities in region III, also for monitoring activities and emergency response activities.

I have a bachelor in civil engineering, graduate work in pollution control and master of business administration. I have been with the Agency for 10 years.

Ms. MIKULSKI. Thank you. I felt that in the interest of time, rather than asking the State the same set of questions or the EPA the same set, that we could all be present at the same table at the same time in the interest of efficiency and response.

Oh, we have two more. I am sorry.

Mr. LEHMAN. My name is John Lehman, Director of the Hazardous and Industrial Waste Division in the Office of Solid Waste in EPA, Washington. My duties involve primarily development of hazardous waste, RCRA, regulations. And my education is I have a bachelor of science degree in engineering physics from the Univer-

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sity of California, Berkeley, and a master of science degree in nuclear engineering, also from Berkeley. I have been with EPA for 10 years.

Mr. GREAVES. My name is Bob Greaves. I am an environmental engineer in the RCRA Permit Section in region III. I have been with the Agency for about 5 years. I have a bachelor of civil engineering from Drexel University. I am a RCRA permit writer.

Ms. MIKULSKI. You are a RCRA permit writer. We are focusing on the three case studies of Hawkins Point, American Recovery and Monument Street. What I would like to do is have the State present any testimony that they wish on those matters, then have EPA do the same, then we will get to questions.

**STATEMENTS OF JOHN R. GRIFFIN, STAFF ASSISTANT TO GOVERNOR OF MARYLAND; WILLIAM EICHBAUM, ASSISTANT SECRETARY FOR ENVIRONMENTAL PROGRAMS, MARYLAND DEPARTMENT OF HEALTH, ACCOMPANIED BY MAX EISENBERG, PH. D., DIRECTOR OF SCIENCE AND ENVIRONMENTAL HEALTH, OFFICE OF ENVIRONMENTAL PROGRAMS, MARYLAND DEPARTMENT OF HEALTH, RONALD NELSON, ADMINISTRATOR, WASTE MANAGEMENT ADMINISTRATION, OFFICE OF ENVIRONMENTAL PROGRAMS, MARYLAND DEPARTMENT OF HEALTH; TOM McKEWEN, DIRECTOR, MARYLAND ENVIRONMENTAL SERVICES, ACCOMPANIED BY DAVID FOSTER, PROJECT ENGINEER; AND PETER N. BIBKO, REGION II ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY ROBERT E. GREAVES, ENVIRONMENTAL ENGINEER, REGION III, JOHN LEHMAN, DIRECTOR OF HAZARDOUS AND INDUSTRIAL WASTE DIVISION, OFFICE OF SOLID WASTE, STAN LESKOWSKI, DIRECTOR, ENVIRONMENTAL SERVICES DIVISION, REGION III, ORTERIO VILLA, DIRECTOR, CENTRAL REGIONAL LABORATORY, STEVEN R. WASSERSUG, DIRECTOR OF AIR AND WASTE MANAGEMENT DIVISION, REGION III**

Mr. GRIFFIN. Thank you, Congresswoman.

I would just like to make a few preliminary observations. I believe Mr. McKewen and Mr. Eichbaum have presented for the record written testimony they will be summarizing, as well as several attachments.

I would just like to mention on behalf of the Governor that, as you have properly pointed out, throughout the balance of the day, when these hearings started, the problem of hazardous waste disposal is certainly a vexing one, but it is not one for which we have not tried in earnest to address. I would mention a few milestones over the last few years which we believe there is certainly always room for improvement, demonstrate a willingness and an interest to put Maryland in sound shape in terms of its ability to regulate and dispose of hazardous waste.

In terms of regulation, 2 years ago we, a consolidation of environmental programs took place within State government. And the effect that they had, in our view the beneficial effect that they had, was to consolidate within one agency, the State health department, regulatory responsibilities over all waste. Previously, hazardous waste since its inception statutorially was originally assigned to

the department of natural resources where as all other waste disposal activities, basically solid waste and sludge were then in the State health department.

One of the effects of the reorganization, if you will, of environmental programs was to merge all the waste-related functions into the State health department. Secondly, we have tried, given limited resources, to improve the resources available to Mr. Eichbaum's division, particularly in the waste management section. Two years ago the Governor proposed some additional enforcement personnel and additional lab personnel which were approved by the general assembly. On the whole question of siting of facilities 2 years ago, as well as in 1980, the legislature enacted a bill, cosponsored by the Governor and House environmental matters committee, creating the hazardous waste siting board. And that has now just evolved to the point where the board just opened its application window approximately 1 month ago.

In addition, as Mr. McKewen mentioned earlier, has brought the Maryland Environmental Service or Environmental Public Utility into the picture of hazardous waste disposal. The board and MES has spent considerable time, first assessing the needs for disposal in Maryland, has engaged in rigorous analysis of those needs and has identified needed facilities given the amounts and types of wastes generated in the State.

The Maryland Environmental Service in a collateral way spent over 1 year developing a required list of potentially suitable sites for disposal, and has been working as well to, in that field and other areas, to try to advance technology so as to move away from burial of waste generally.

I might add in that regard that Maryland Environmental Services has published its first, what is referred to as Maryland Waste Exchange which is a cooperative effort between MES and the business community in the State, the purpose being to allow industries which generate waste to match up with those which can use it as a raw material.

They are also working now with small generators because uniquely perhaps in this State, many of the generators of hazardous waste are very small generators with unique problems. And perhaps potential opportunities for more recycling and reuse of materials.

Lastly, although it is not directly on point, I would add that we have been working vigorously in areas where waste can be incinerated to do just that. We are bringing on line, hopefully, over this coming year a major new incinerator at Russell Street in Baltimore City to replace the pyrolysis plant. We are working with other plants in counties as well, Harford County, Eastern Shore—Harford County and Baltimore County where we have had for several years a resource recovery facility which we are now retrofitting.

We are as well funding some final studies on the retrofit of the Pulaski incinerator, also in Baltimore, for sludge burning. Congresswoman, I would like to come back and comment I think at a later date. I am sure you are going to ask me some questions I already wanted to respond to based on the testimony heard earlier. If that is agreeable, I would pass the mike to Mr. Eichbaum.

Ms. MIKULSKI. Certainly. The pattern of the hearing is to let people tell their own story in their own way.

Mr. GRIFFIN. Fine. I just wanted to make those general comments.

## STATEMENT OF WILLIAM EICHBAUM

Mr. EICHBAUM. Thank you, Congresswoman. I would just like to make first of all the general observation that when I took over the responsibility in Maryland about 20 months ago, it was obvious then that there was a very serious crisis in hazardous waste management. As I said then and have said since, it is at least in part a complete lack of confidence on the part of the public that neither government or industry knows what it is doing. I think what you have heard and what we have heard today indicates that that credibility gap and believability gap and understanding gap still exists, at least for those people who live near the facilities that exist or are proposed.

Our major goal is to try and regulate the industry so that the public and the political leadership of the public can have the confidence that we are protecting the public health. We may believe we are but that doesn't do much good if that isn't a shared perception. I would like to talk, you have my prepared testimony, I will only summarize a few points. You also have a document which we prepared and provided to the committee and others that are interested about Monument Street. And the blue binder is an effort to provide a lot of documents responsive to the call of the subcommittee, and I suspect may not be entirely comprehensive. If there are additional documents as a result of the earlier witnesses' statements or anything that comes out during our presentation, we will be happy to provide those.

The first point that I would like to address is the enforcement question.

Ms. MIKULSKI. What is this?

Mr. EICHBAUM. That is an attempt to summarize a large set of materials we hoped would just as background for the committee provide you with information as we saw the notice that came forward. It summarizes the status of the State in terms of interim authorization under RCRA and it also addresses several of the problem areas that are before you today. I would first like to talk about the enforcement program that the State is now pursuing.

A couple of interesting things to note. First of all, there are in the State six facilities that are generally available to handle hazardous materials. We have major enforcement actions underway against four of those facilities, or have completed such actions against four of the six facilities.

In addition, there are a number of other companies and individuals that are involved in the hazardous waste field and we have a large number of enforcement actions underway or completed against them. In fact, there are people, a person, who is in jail today in Maryland for violating the State's hazardous waste statutes.

In part, this program is a result of a decision that was made by the department of health and the attorney general last summer

that was designed to substantially increase the activity in the enforcement area, and particularly to begin to view violations of hazardous waste statutes as criminal offenses. That is the starting point of an investigation as we proceed.

Some of the issues which have been discussed today or will be going through that process of evaluation by the attorneys assigned from the attorney general's office to the department, specifically for hazardous waste enforcement. Another area of active effort and enforcement has been a program we are undertaking in cooperation and supported by the State police, where we have a grant from the Federal Government that puts Maryland State Police on the highways for the specific purpose of surveilling the transport of waste, or hazardous materials, whether or not waste, through the State and assuring that it is done in compliance with applicable requirements. That program began about 4 months ago and will proceed for 3 years under that Federal grant of about $180,000.

In order to provide some staff support from the waste management administration that would be specifically addressing hazardous waste enforcement and inspection activities, we reorganized our efforts there in the last 4 months. And perhaps a little background is worthwhile here. There are about 38 inspectors statewide that are involved in all of the activities within the waste management administration. That is solid waste, sludge management, NPDES and hazardous waste. They shared their responsibilities, and we didn't have them broken down water, solid waste, hazardous waste. We pulled six of those people and formed a hazardous investigation team. So that for the first time the sole responsibility of those six people is going to be in this important area. We are going through a training program and we will be formally deploying them in the next month.

One of the concerns that certainly clearly comes out today and elsewhere is the whole question of public participation and public access to the governmental process. We support that and think that has to be done. We think effective communication is critical in order to bring about understanding. Obviously from what you have heard we have not succeeded yet. I am appointing a new individual, have done so, in the office who will have overall responsibility for the public information and public participation efforts of the office, with particular initial responsibility in the hazardous waste effort. She has prior to this assignment been the public participation person for the State's water quality effort, and I think will be very effective.

I might just note in passing that one thing we haven't talked about much is Superfund. I would just note in passing that, with the cooperation of regional administrator's staff, Maryland has undertaken and completed, and I think we may be the first to be completed in the country, a Superfund cleanup site, which was here in the city of Baltimore and was about a $350,000 effort with about $100,000 of that coming from the State and the city.

Finally, one of the issues is: Where do we go in the future. I would only make a few points there. We are concerned about having adequate support from the Federal Government, both from a regulatory perspective and from a resource perspective. And we have addressed the question as to whether the standards and pro-

grams of the Federal Government are meeting the job. And most notably, I was the only State official in the country from a program that went to Washington and testified against the EPA proposal to allow up to 25-percent liquid wastes in landfills.

I am happy to say, at least for the moment, that emergency decision was undone, not without some damage some places in the country. We are also concerned about the problem of directing waste flows and the role of the landfill in the hazardous waste disposal and management problem. This is not exclusively the function of a regulatory agency. I guess I will say at this point that we will be taking a very hard look at what materials we permit for disposal in landfills, and the suggestion of the Chesapeake Bay Foundation in that regard that you heard earlier I think makes a lot of sense.

I will now perhaps fairly briefly address the three specific issues: Monument Street, American Recovery, and Hawkins Point. Let me start with Hawkins Point because that will be very brief. There is, as you know, a public hearing on that proposed permit next week. There has been a request for adjudication of that permit. I am the person who makes the decision on that permit, and also will be involved in the decision on the record and the adjudication. Therefore, I don't propose to say anything about Hawkins Point.

I might note that I have not been involved, precisely because of that adjudicatory and final permit decision responsibility, not involved with that matter to date in any way of evaluating the proposal or of its design.

With respect to American Recovery I would make several observations. First of all, when you and I were there in the fall of last year, I think we were both concerned with what we saw. There were three major areas that corrective action was to be taken. Those involved concrete pads, the flood control situation, and removal of wastes from the third floor of that facility. We have, for reasons that have been discussed already in terms of the property ownership and alterations arising out of that issue, been delayed in the flood work. Corrective action has been ordered as part of the order, and the failure to take that action is one of the counts for which we are requesting a civil penalty.

With respect to the concrete pad issue, that was delayed primarily because of the possible move of the facility. At this point that has also been ordered to be installed since I am not taking any bets anymore on the removal of that facility one way or the other. One of our concerns with respect to the civil penalties, and it has been a problem with the handling of material, even including what we thought we had accomplished 6 or 8 months ago, so we have initiated this action.

On Monument Street, we have a series of charts which we think depicts what we believe is the situation there which I would be happy to go through for the Congresswoman if you would like to, or I can just summarize it. They are in the materials we provided you. Whichever you would——

Ms. MIKULSKI. Let's see.

Mr. EICHBAUM. Very briefly then, we will do that. I won't take a lot of time.

On this first chart, it just lays out where the site is, and its basic configuration. Then based on the monitoring wells we have placed there, an indication of ground water flow which, as you will see, these are the locations of the existing monitoring wells. Location, flow of ground water appears to be from the northwest to the southeast.

Ms. MIKULSKI. Wait a minute. This is Monument Street, Madison Street.

Mr. EICHBAUM. Yes, ma'am. That is looking at the level of ground water flows, pattern, right.

Ms. MIKULSKI. This is the famous northeast corner?

Mr. EICHBAUM. That would be correct. The railroad line is here, Armco is up here.

Ms. MIKULSKI. Where is this manhole cover where everything goes to?

Mr. EICHBAUM. The leachate manhole is right up here. That is the sump for the leachate. As I understand, the collection system is to here.

Ms. MIKULSKI. Where is the collection system? Here?

Mr. EICHBAUM. It is through the landfill to that point. It is at the base of the landfill.

Ms. MIKULSKI. From here you have got the——

Mr. EICHBAUM. That is the ground water which is well below the base of the landfill.

Mr. FORTUNA. How far is that?

Mr. EICHBAUM. That is elevation.

Ms. MIKULSKI. Wait. You have to speak up. Go ahead.

Mr. FORTUNA. How close is the nearest ground water to the base of the landfill?

Mr. EICHBAUM. In the black report I believe we have the details of that. I don't have that in my memory at this point. Let me try—go ahead.

Ms. MIKULSKI. Here is my question. Not being a Ph. D. or a lawyer, let me ask a simple question. If the natural flow of water in here is this way, because way down here is the port, and so on, so the water goes to water. Yet your collection of what says what is the landfill and what might be leaking in the ground water is up here.

Mr. EICHBAUM. Oh, no, that is not correct. These four wells here are down into the ground water.

Ms. MIKULSKI. What do these wells do?

Mr. EICHBAUM. They go down into the ground water. You have ground water in the bottom of them. We collect samples, and then they are analyzed.

Ms. MIKULSKI. Where do you collect those samples? I thought this is where you collected them.

Mr. EICHBAUM. We collect them there, also. Both places.

Ms. MIKULSKI. So you collect them here. Where else?

Mr. EICHBAUM. Out of each of these wells.

Ms. MIKULSKI. So you go to here, here, here and here; is that correct?

Mr. EICHBAUM. Yes, ma'am.

Ms. MIKULSKI. But you only have one down here which then shows, this is what it looks like when it is up here, and this is what it looks like over here.

Mr. EICHBAUM. That is correct.

Ms. MIKULSKI. All right.

Mr. EICHBAUM. One of the things I wanted to show very briefly is to compare what we are finding in the monitoring wells with whatever applicable standards may or may not exist. This I want to point out is an aggregate of all samples. In the case of zinc, copper, and lead, there has never been, and this is roughly 59 samples we have collected, a violation of applicable standards.

In the case of chrome and mercury, this is the average, although we did find two and three that did exceed the standard. But we have, and I will show you the trends on those in a little while—again, if you are looking at drinking water standards and ground water, that is the comparison of the sampling that has been done at the site.

Mr. FORTUNA. You are saying for mercury you have noted two samples have exceeded drinking water standards. In which wells?

Mr. EICHBAUM. That is right. Ground water. I don't have that. It would be in the report we have provided you and we can point that out for you.

Ms. MIKULSKI. One more before we go into the next chart.

Mr. EICHBAUM. Yes.

Ms. MIKULSKI. You say this is an aggregate?

Mr. EICHBAUM. That is right, ma'am.

Ms. MIKULSKI. Of your samples. What is the aggregate from? Is this recent, in the last 18 months?

Mr. EICHBAUM. Last 18 months. That is correct, these monitoring wells were put in in the summer of 1980.

Ms. MIKULSKI. Prior to that there were no collection mechanisms?

Mr. EICHBAUM. I guess not of wells. There was presumably testing of the leachate. I don't have that data and it has not been included here.

Ms. MIKULSKI. Did these wells go in after the discovery of the drums?

Mr. EICHBAUM. That is correct. This is the same source, monitoring wells, but looking at volatile organic chemicals. Again, trying to do some comparison. In this case we had split sampling between the State and EPA. For these organic chemicals there is only one drinking water standard for the trihalomethanes. This is what we found in ground water. The other standards are snarls, which are basically a risk assessment component.

But again the levels are fairly low in comparison with that. We just recently ran an analysis for pesticides to see what we might find. And what this basically shows, these are the standards, we found nothing of these. We did find a point on 0.02 parts per billion of dieldrin comparing that with the proposed standard of 0.25 ppb.

I believe, Dr. Eisenberg, these included PCB's?

Mr. EISENBERG. Yes.

Mr. EICHBAUM. We found no PCB's. Again, this is in the monitoring wells, this is ground water. The first thing we see, and I believe EPA shares these figures, at least as far as ground water contami-

nation is concerned we do not see a problem there that could be attributed to the landfill. I might just note that we find some of these numbers in the No. 1 one well, which is the up-dip or stream well, if you will.

I am only going to show one of these. They are in the materials we provided to the community and the committee. That is an attempt to look at trends, and also here we have the leachate tank, which is also—you will see most of these have this fairly low, also. We are not, again, seeing a significant, when you are looking again at parts per million, of this entire picture trend change.

Now the last chart I want to do is just a brief one that tries to summarize where we see the health of the community issue. Let me have that one. This is an attempt to summarize in a graphic form the results of a health study that the department did at the request of the community and was released late last summer. What we basically see is in comparing, and the area we took was Highlandtown, which is admittedly not immediately adjacent. But if you get immediately adjacent you begin to lose any statistical reference.

For the female population, you find in fact that the rates of cancers are somewhat lower in Highlandtown than you would expect based on the statewide occurrences of cancers. You do find in the male population a higher frequency in the age group 65 to 70. Several observations can preliminarily be drawn from that. One is that women, tending to be in the community more of the time, are more representative of the environmental conditions in that community than are men. And that the men, particularly at this age group, are beginning to show the effects first of smoking and, second, perhaps of occupational exposures.

So if you were looking for an environmental reference, this would be what you would look at. Also, in terms of the types of cancers, we have just done an exposure. This is the incidence we looked at, 1973 to 1979. This is what we see in terms of the types of cancers, what the exposure period would be. We are working on further updating this because we did not have the 1980 census data. We now just recently have gotten that, and we will be reporting further to the community as to if there is any shift that that shows.

I guess one of the points that I would like to make, well, before going to what the conclusion is——

Ms. MIKULSKI. Dr. Eisenberg, did you supervise this?

Mr. EISENBERG. Yes, and I would be pleased to answer any questions.

Ms. MIKULSKI. Just a question. Doctor, in studies like this they tend primarily, any solid study tends to be longitudinal, isn't that correct?

Mr. EISENBERG. Well, before I answer that question, Congresswoman, perhaps I can just mention one point first. That is, the first point that had to be emphasized initially was the fact that any cancers that are seen now could not have been caused—we are looking for latency periods of most of these cancers of between 20, 30, 40 years. The landfill was in operation from 1971 through 1979. And that is what I think the top part of the chart here really shows, that the cancer study which encompassed the years 1973

through 1979 could only account, or could only really take into account cancers which were really initially onset somewhere between the early 1940's through the late 1960's.

Ms. MIKULSKI. So Mr. Eichbaum is right. What you are saying is that what this cancer study shows is the effects of long-term neglect of environmental enforcement either in Baltimore's industries or whatever, because what we are seeing here happened back a number of years ago.

You can't attribute this to the Monument Street landfill; is that correct? So therefore whether Mr. Eichbaum says, because women possibly have lower rates of cancer than the male members of that community, because they live in the community, really is an argument that doesn't mean anything.

Mr. EISENBERG. No, that is not so. The assumption that any of these cancers that were involved in the study were due to the landfill is not a valid assumption. In other words, the landfill has nothing to do with this cancer study. But the assumption that the women perhaps might be more indicative of their environment, in other words they have less of an occupational exposure compared to the male counterparts, that may be a valid assumption, though.

Ms. MIKULSKI. Well, the good news, Doctor, is that sexism kept the women out of the factories, except World War II, and therefore they don't have that. Our men do. But the women were subjected to environmental and also——

Mr. EISENBERG. I think one more point that should be made is that if you look at the cancers, especially of the younger age population which are more indicative of the last couple of years, they are in fact somewhat lower than one would expect.

Ms. MIKULSKI. Let's go on because the cancer study I think could be——

Mr. FORTUNA. Your control group here is?

Mr. EICHBAUM. State as a whole.

Ms. MIKULSKI. Which includes agricultural?

Mr. EISENBERG. No. What the study says is based upon the population of the Highlandtown area, the number of cancers you would expect for that population in each specific age group compared to what we actually observed in that particular age group in that area. In other words, we would expect a certain number of cancers for those people there during this time period, and we actually observed either lower or greater numbers.

Mr. EICHBAUM. Congresswoman, one, we did the cancer study at the request of the community because of their concerns. We did do the monitoring, both because of our own concerns and in response to the community's concerns. And it was discussed with the community. Now I would just like to get to the point of conclusions, and where we are still at odds with the community, obviously.

Ms. MIKULSKI. One of your very able female——

Mr. EISENBERG. Dr. Farrell.

Ms. MIKULSKI. Is that her study?

Mr. EISENBERG. Yes, it is; same one. I believe you have a copy.

Ms. MIKULSKI. I didn't know if there was more than one.

Mr. EISENBERG. No. There has been an addenda based upon the 1980 census figures.

Mr. EICHBAUM. Is that completed now?

Mr. EISENBERG. Yes, it is in the reports.

Mr. EICHBAUM. That report was also submitted to CDC by EPA and I gather EPA has received confirmation that they agree with the methodology that was used and the general conclusions. However, notwithstanding what we are seeing in the ground water and what we are seeing in leachate and what we are seeing in terms of the health of the community, because of the disposal of hazardous waste materials in that landfill, at least in March 1980, there remains serious local concern as to whether or not at some point in time in the future their health is going to be stressed or harmed. And it is our view that what we know about that situation in terms of what is there, in terms of what we see in the operation of the leachate system and what we see in ground water that that is not a problem.

They still have not accepted that. And so we are now moving into what more ought we, can we do. As you know, the Governor stated at a press conference 2 weeks ago the proposal to have a third party come in and look at everything and everybody's files and completely review the matter and say whatever they felt was appropriate or ought to be done next, ought not to be done, whether or not the work of the State was valid and the Federal Government was valid.

We did initiate discussions with Johns Hopkins. We have a proposal from Johns Hopkins for that. We found out in the last week that Johns Hopkins is unacceptable to the community because they are not from out of town, although Mort Cohen 2 years ago was from Pittsburgh. But we will now be trying to find out several other institutions that could do a comparable piece of work. We will be getting back with the community to discuss that with them.

The second question is that of doing test borings in the landfill. As you, I am sure are aware, that is a procedure which the State has not been in favor of. There have been essentially two reasons for that which we have at least consistently told folks. We didn't say that there wasn't a reason for it. One is the risk of methane explosions or fires, and the second was that since that leachate collection system and the clay base of the landfill that it is on, seems to be working, we are somewhat concerned about the possibility that that would be interfered with and breached, and in fact problems would occur that are not now occurring.

We discussed in an attempt, Mr. Griffin and I, really for the first time to precisely understand the community concerns in this regard, what their interests were. And we will be further considering that. I don't have a commitment to make one way or the other at this point. But we are seriously examining their concerns, and where there is several interim steps as perhaps suggested by Mr. Kaufman earlier, in terms of other surveillance of the landfill, we will be looking at that and doing that, and we will be getting to the community with what they think, getting their reactions, and going forward on that.

I don't think there is any more I need to say in terms of that specific issue at this point. I will be happy to, I guess, turn it over to EPA for some of their comments and then further questions. Or I guess to Tom McKewen.

Mr. MCKEWEN. No.

Ms. MIKULSKI. Did anyone want to say anything? Mr. McKewen, did you want to say anything?

Mr. MCKEWEN. No, in purposes of continuity, why don't we stay with——

Ms. MIKULSKI. Mr. Eichbaum has already told me he can't talk about Hawkins Point.

Mr. MCKEWEN. I was going to suggest we went—we go to EPA on Monument Street.

Ms. MIKULSKI. No, we have gone through Monument Street. I would like to complete this.

**STATEMENT OF TOM McKEWEN**

Mr. MCKEWEN. Fine. On Hawkins Point, No. 1, I think no one gets into the hazardous waste siting and construction business unless they are seeking a profit or a masochist. The State is clearly not the former and, I would argue, we are not the latter. The reason we are in the business is quite simple.

Some years ago it became apparent, and this was not a phenomenon unique to Maryland, that the very publicity which has caused people properly to be concerned about hazardous waste hassles made it almost impossible to site new hazardous waste facilities and around the country, hazardous waste facilities, particularly landfills, as they were becoming full, were not being replaced.

In this State we had one publicly available hazardous waste landfill. I was about to say still in operation. Actually, I suppose as of today it may be closed down. As of yesterday, it may be closed down. But since it was apparent about a year ago that that action could happen, the State took on the responsibility of doing two things:

It created an act which established a hazardous waste siting board which in effect created a body of seven people who act as a surrogate local government. They make a land use decision that normally is made by county commissioners or a mayor and council which you know, as a former local legislator, is a very potent thing for a State legislature to decide to do it.

It is not a step lightly taken. That board, as John indicated, has now gotten itself into a posture where it has received applications and is about to begin business. However, it was also apparent that that action by itself was not going to provide a backup, should the Solley Road landfill be closed down this year.

So last year MES was asked to try to find a site where a backup hazardous waste landfill could be located and could be made available as soon as possible. Just a word about why a landfill rather than something else. The types of hazardous wastes generated in Maryland, I guess you can put in two categories: Those that can be processed or incinerated so that they no longer are hazardous, and those that for the present we have no technology available other than land filling.

We have attached to the material we sent in a report, the so-called Little report, which indicates that of the—and these are approximate numbers—of the approximate 200,000 tons per year of hazardous waste generated in the State, well over half of that, perhaps two-thirds, is of a character that cannot be incinerated, that

we have no available technology for neutralization or detoxification.

Basically, we have adequate capacity within the State to handle that material which can be chemically processed. We have not quite adequate capacity to incinerate those materials which can be incinerated. There is a gap of something like 12,000 to 14,000 tons per year that should be available to incinerate everything that can be incinerated.

I will get back to that in a second. But the bulk of what is left, or everything that is left, about 120,000, 130,000 tons per year, must at the present time be land filled to be safely handled.

So we establish a program which we hope will do several things. No. 1, address the most immediate problem, which is the provision of a hazardous waste landfill. Second, that gap in the incinerator capacity, we are hoping, will be filled by some private firm. That may not happen because even though 12,000 or 14,000 tons sounds like a lot of material, economically it is not much material to build an incinerator.

Perhaps we can etiher bring about an expansion of an existing incinerator or perhaps we can arrange a tradeoff with some neighboring State which has excess incineration capacity that they will receive our incinerables and perhaps we could receive something from them in turn.

That kind of tradeoff is not available today. Every State is hard pressed to meet its own needs and is not at this point interested in setting up long-term tradeoffs. If we find that that incineration capacity is not made available by private firms, then we will see what we can do to make that capacity available.

Our basic objective will be to receive at a State operated hazardous waste landfill only those things which have no alternative fate other than land filling. We are not going to achieve that immediately. At least I don't think we will.

I suspect initially we will be receiving some material which something else could be done with. We will try to reduce that amount to zero as soon as we reasonably can. In determining the site we started off looking at the entire State. If you look at the State of Maryland, two things become immediately apparent. That the entire Eastern Shore has a high water table, the entire western part of the State with minor exceptions has rather rugged topography and a geology that does not lend itself to a hazardous waste landfill.

What you are left with is a rather spotty pattern of land, and, Dave, if you would hold up that one map, what you are left with as a means of search area is an erratic, variegated pattern of land in the central part of the State.

Ironically, you wind up with land that drains, without exception, to the Chesapeake Bay. In fact, that map does not exclude areas which we later did exclude in the western part of the State and northern part of the State. The point about the drainage to the Chesapeake Bay is rather important, too, because except for a few acres, the entire State with the exception of the coastal area, the Atlantic coastal area, and a part of Garrett County which flows to the Ohio, and literally a few acres in Cecil County, all the rest of it flows to the Chesapeake Bay.

The bay is the drainage area of the State, which means that no matter where you put a facility, if it malfunctions and pollutants migrate off that site, they eventually are going to find their way into the bay. Or into the ocean flowing under the bay.

The reasons we boiled the entire State down to Hawkins Point and I am compressing a year and a half of rather painful meetings and analysis into a few minutes, but the reasons we boiled the entire State down to Hawkins Point were several.

No. 1, Dave, if you would now put that aerial photograph up, No. 1, the area we chose is on property owned by the State. We already were operating on that property a hazardous waste landfill, albeit a rather simple one because it dealt with only one material, chrome waste from Allied Chemical.

The reasons for that very briefly are that there was a long-term, 40-year, contract between the Maryland Port Authority and Allied whereby the port authority received voluntarily, and in fact, wanted that material from Allied because it was a good structural material that was used to build among other things, Dundalk Marine Terminal and others; fill in other parts of the area around the inner harbor.

Some years ago it became apparent that that structural material also contained hexavalent chrome and the port authority had to cease using it as a fill. So the commodity suddenly became a waste material. Allied was stuck with no place to put the waste, having to depend upon the port authority, yes?

Ms. MIKULSKI. The material that has been used at the Maryland Port Authority site you also said was used to build the Dundalk Marine Terminal?

Mr. MCKEWEN. In part.

Ms. MIKULSKI. Does that mean that Dundalk Marine Terminal is built on chrome?

Mr. MCKEWEN. Much of it is. We have had a program over the past few years to put in drainage structures and prevent any further pollution out there. This goes back probably to 1969 or 1970. It goes back a long number of years.

Ms. MIKULSKI. Where is it in the inner harbor?

Mr. MCKEWEN. I don't think anyone has a map showing where it is. But it has been found in a number of locations. Not just Allied. But Maryland and Baltimore have been one of the historic seats of the chrome industry in the country. The world, I suppose.

And that chrome waste, which is physically a damp sand, has always been desired as a structural material. If you scratch the surface in many parts of Baltimore, you will come across a yellow stain.

Ms. MIKULSKI. What we are talking about is Allied Chemical material?

Mr. MCKEWEN. Right.

Ms. MIKULSKI. That contains a substantial amount of chrome. It has been used at Hawkins Point, Dundalk Marine Terminal.

Mr. MCKEWEN. Right.

Ms. MIKULSKI. You are telling me that proper steps have been taken to insure that that is not in some way constituting a danger in terms of——

Mr. MCKEWEN. In terms of Dundalk Marine Terminal, yes. We have had a program carried out for about 2 years on that. We think we have that one well under control.

Ms. MIKULSKI. The point of my question, Mr. McKewen, is that what you are presenting here is new information to me and I just want to be sure it is straight. It is a substitute for another conversation. But you are also saying that material was used somewhere else in the inner harbor.

My question to you, sir, was, do we know where that material was used and have we instituted proper safeguards?

Mr. MCKEWEN. The answers to the first question, do we know where it was used, the answer has to be no, because we are talking about over 100 years of history. As I say, this is not just the existing Allied facility. This goes back to its predecessor industries.

As to whether there is a hazard, the monitoring in the harbor and the waters show to the best of my knowledge, and Bill Eichbaum, if he knows different I am sure will interject, to the best of my knowledge water monitoring shows no water pollution being caused by those old chrome deposits.

The hazards anybody operating in that part of the city is aware of is that if you are excavating into an area which has not been touched for many years and come across a yellow-looking material, then you should have a sample before you excavate further.

The hazard is not so much from a water quality standpoint as it is from a skin contact standpoint.

Mr. EICHBAUM. In terms of the dimensions of the toxicity problem that may be in the Patapsco River and sediments below it, that has been a major area we have looked at intensively in the course of the Chesapeake Bay program that EPA and the States have been carrying out and that we are concluding this year and early next year.

We hope to have a very good picture of where the material is and some assessment, perhaps, of impacts it is having on the larger bay. We can't answer some of the questions that you are posing at this point, but we hope we will have a better handle on at least the picture in a broad sense as that program concludes.

Ms. MIKULSKI. Coming back to Mr. McKewen, that material that was excavated for the construction of I-95 would be an example of that?

Mr. MCKEWEN. Yes.

Ms. MIKULSKI. Go ahead, please feel free to go on.

Mr. MCKEWEN. So one reason we chose Hawkins Point was that we were operating there, we had an interim permit. That permit could be extended, Chesapeake Bay Authority I think spoke to that issue quite well. But that was not the major reason we chose Hawkins Point. It was a contributing factor.

The major reasons were that in addition to good geological and good information on that geology and hydrology, that it is located directly off the Baltimore Beltway. And the Baltimore Beltway pretty much describes the area in which about 95 percent of the hazardous waste generated in the State is generated.

That meant that locating near that main highway, we were not requiring the delivery trucks, collection vehicles, to go through residential streets or to drive long distances, which is both an eco-

nomic and environmental problem. They could get to the site by a major highway very quickly.

Third, and this is an important issue, I believe, and it is kind of the other side of the coin, presented by the citizens from Hawkins Point earlier, what they were describing were the conditions which make that a, and I am stating this, I know I am understating this, but a much less desirable place to live than it was in the turn of the century.

Those very things which make it a less desirable place to live make it from our standpoint a more desirable place to locate a hazardous waste facility. I am not going to say that we can go anywhere and say we are going to improve your neighborhood by creating a hazardous waste landfill. But this is one of the few areas where we can site a hazardous waste landfill and properly state that we are making a use of land which is compatible with other adjacent land uses.

In addition to the heavy industry already there, the Glidden-Durkie facility, Grace Chemical, the Gypsum facility, Diamond Shamrock and Kennecott Copper, the area is more or less ringed by heavy industry for a lot of good economic reasons.

There are other existing and proposed facilities; BFI, which is now in a closed position. Gypsum, or SCM landfill, which is active. The city had identified last year the Grace property as a good, perhaps the best remaining sanitary landfill site in the State of Maryland; pardon me, Baltimore City.

As I had indicated, we already are operating a hazardous waste landfill on the port authority property. If nothing else, the land we are talking about does blend, if you will, with existing landscape, that landscape having had a lot of damage done to it over 100 years.

Fourth, the area is one that meets the criteria established in the Hazardous Waste Siting Act whch refers to locating facilities giving weight to where the wastes are generated. I have the number in the material we submitted, but I think roughly 60 or 65 percent of the hazardous waste generated in the State is generated in Baltimore City. This is probably the only area within Baltimore City that could responsibly be selected for a hazardous waste landfill.

Again, that is not a controlling factor but it was a factor that spoke in favor of choosing the site. Now, that is the positive side. I could add some other things to that but I think that they are the major ones.

Oh, yes, John reminded me of one I should mention. The next to the last step we undertook in the site search was to identify from that area that the map earlier indicated, 14 potential candidate sites which fell out of the screening analysis as the ones most deserving of detailed analysis.

Of those 14, this was the only one where the nearby residential area was served by community water. And community water was a source that could not be affected by the hazardous waste landfill because of course here the residents are served by Baltimore City water, and the source of that water are far upland.

So that also was a major criterion. The site itself in fact is downstream both from the surface water and groundwater standpoint.

But on the negative side, clearly the thing that strikes everyone who either is simply looking at the site objectively or for other reasons; feels the site has disadvantages. The first thing, perceptual problem of it, it is close to the water. There is no question about that. I would like to address that briefly, because I think it is an important issue.

No. 1, as I have stated earlier, virtually the entire State drains to the bay. Beyond that, I would have to say Maryland by and large is a water-rich State. Anywhere you locate something, you are close to some body of water. So I would say the first criterion is not necessarily one of proximity of water, but how well are you protecting that body of water which you are near.

Dave, do you want to get that cross-section of the cell? The major emphasis we have given in designing the facility is to see to it that we don't in fact adversely affect a nearby body of water.

And while Dave is putting that up, let me mention one other point. That is that we are dealing—take that off 1 second if you would, please—I have already mentioned we are dealing with an area that has been used extensively for waste disposal.

As one of the citizens indicated, that the early varieties of the waste disposal employed a technique which we insist we are not using today which was simple dumping. The trucks pulled up. The tailgate went up. Whatever was in the truck came out on the surface of the ground.

There is no question about the fact anyone who has seen the area can recognize that we are dealing with a badly abused piece of land. The port authority property on which we are locating is not an exception to that.

We were aware some time ago that the—there was an older deposit of waste which also happened to be chrome waste that has been placed under conditions of less than good control, in that even though there was no overt evidence of a leachate problem escaping from that into the harbor, there was obviously evidence that the old cell was filled with water. And it was only a matter of time until that water found an outlet and posed a threat to the harbor.

We also became aware somewhat later that some way, someone, somehow put a deposit of, Dave, how would you describe it? A thick paint sludge.

Ms. MIKULSKI. Who is Dave?

Mr. MCKEWEN. David Foster is a project engineer with Maryland Environmental Service. His chief responsibility is Hawkins Point. His second responsibility is any question I cannot answer; he can.

So we were dealing with a site that had problems and where money had to be spent to eliminate the negative problems already there. So this is a site where we could, I think, with a reasonably straight face, say that we could build a new facility.

And when we were done, we would leave the site in better shape, a lesser hazard to the environment, than it was before. Now, I am restricting that only to the Port Authority property. I am not claiming we are bringing salvation to the entire Hawkins Point area, but to the Port Authority area we can, I think, properly say we can improve the property.

Ms. MIKULSKI. Mr. McKewen, I would like you to summarize.

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Mr. McKEWEN. We will do so right now. Basically, and I will end on this point, the design features built into the facility are designed to isolate the cell insofar, in so much as we possibly can from the rest of the environment. We will intercept all surface water before it flows on to the site and divert that surface water around the site.

We will intercept underground water, and, I guess, Dave, that ground water drainage does not show on this cross-section. It does show on the handout; it is not shown well there. But there are—there is a peripheral subsurface and peripheral surface drainage so that any water flowing to the site from above or below ground will either flow around or be forced to flow under, otherwise we will intercept it and pick it up.

Second, we will have on the bottom of the cell a 3-foot minimum layer of clay, 2 feet on the sidewalls. Above that, we will have leachate collectors so that any water which infiltrates the cell will be collected and piped by gravity out of the cells.

We will have manholes on those drains so that they can be inspected and blockages, if they should occur would be removed. The top of the cell will be encapsulated with clay. We will also, and this was added as a design feature after this drawing was made, we will also have a thick plastic, probably hypalon cap, so that as the cells are completed, any water which otherwise would infiltrate, would be diverted from the cell, thereby preventing any future leachate, we hope.

If that hope does not materialize, again we would maintain the leachate collection. That leachate that will be collected will not be treated onsite. It will be trucked away to a chemical processing facility.

Ms. MIKULSKI. This will be safe, safe for the next 100 or 200 years?

Mr. McKEWEN. I don't know how to respond to that. I can say yes, it is designed to be. But the whole question of how you guarantee safety in perpetuity, because, if we are sure it is safe 100 years, obviously somebody can say how about 200 or 500, and we are dealing with a material that, not the worst kind of hazardous waste if one can classify hazardous waste, we are going to accept only solidified materials, no liquids. We are going to accept basically only inorganics.

I say basically, because I am not certain we can say we will accept no organics. That is something we are now looking at with the health department. But we are not designing this facility to handle all kinds of hazardous waste. Particularly, we are not designing it to handle the more difficult and more dangerous of hazardous waste.

Nevertheless, this material, should it reach the environment 500 or 1,000 years from now, could cause a problem, and one of the reasons we agree we should be working our way out of landfills to the extent we can in the future is because I am not sure how you guarantee something in perpetuity. But this will be designed, to the best of our knowledge and ability, to last. And the State, so long as the State continues to exist, it will have a responsibility to monitor the site and take corrective action, if needed.

We will, of course, have the liability insurance coverage required under EPA and State regulations. We probably will have excessive coverage. So briefly that is it.

I would be happy to respond to any questions you may have.

Ms. MIKULSKI. We will come back to you.

EPA?

STATEMENT OF PETER N. BIBKO

Mr. BIBKO. Congresswoman Mikulski, ladies and gentlemen, I have some seven pages of prepared testimony that I will be giving you a copy of, that I intended to read here today. But, consistent with the format we are following now, I think I can summarize.

Ms. MIKULSKI. Do you have a copy?

Mr. BIBKO. Do you have a copy for the Congresswoman? It is back there. Could you provide it for her, please? Shall I wait, Congresswoman?

Ms. MIKULSKI. No. Stan can get it. Why don't you go ahead. We don't want to delay any longer.

Mr. BIBKO. Thank you. Basically, the first half of the seven pages simply presents an outline of what I perceive my duties and responsibilities to be as a regional administrator under our two primary pieces of Federal legislation involving wastes and hazardous wastes in particular, Superfund legislation, and the RCRA legislation we have been discussing.

Congresswoman, if I may, the sum total of what I would say and have said in the seven pages submitted to you is that I perceive our responsibility as being one of assuring that imminent and substantial hazard to public health does not occur within the region, and where we have reason to believe that this is occurring, to take action as set forth in the appropriate pieces of legislation.

With regard to the RCRA legislation, section 7003 authorizes the EPA, where they find an imminent and immediate threat to public health, to bring legal action which can result, after a long period of time, assuming you have a defendant, and he has enough money, and you win the case, in coming up and taking his money and using it to try to abate or mitigate the impact on the public health of the people residing in the vicinity of such facility.

The problem there, of course, is we have to go the legal route. I believe Congress, I am certainly not going to purport to tell you what Congress intended, Congresswoman, but my interpretation of it on the Superfund was basically to give us a mechanism to take emergency actions at sites where we either don't have a defendant, or we really can't wait to go through the litigation route.

And Superfund, I believe, provides us a mechanism to take emergency actions. But, again, Congresswoman, ladies, and gentlemen, the point I want to emphasize is that, again, our authority is, I think, as it should be, to use this, where we believe we have substantial evidence on record indicating that there is indeed a substantial imminent or immediate threat to public health.

In addition to this immediate emergency action, we can take under both pieces of legislation—we have a remedial function to take under the Superfund legislation, where a long-term solution or total cleanup such as the one we had at the CMI, the total

cleanup is recommended. Here we worked very closely with the State, and, according to a lot of complex models developed by the agency, to try and treat the worst sites in this category, to cleanup the worst sites first.

Congresswoman, that summarizes, I think, what I said in the prepared testimony regarding how I perceive and interpret my authority under RCRA and Superfund to act.

I guess I should proceed next—I would like to proceed next to the Monument Street landfill and discuss how I have applied this authority working with my division directors at the Monument Street.

Before I do, just to briefly set the stage, Monument Street solid waste facility has hazardous wastes in it, as hazardous is defined under Federal legislation.

I think the evidence is pretty clear on record that the wastes are there. Whether it is a 100 or 1,200 barrels may be subject to conjecture, but the wastes appear to be there from the record.

EPA is not contesting that, and I don't think the State is either. The real concern is what are these wastes doing to the people in the area that have to live with the wastes on a daily basis, assuming there are these wastes there. The concern I had was addressed by taking a look at the various pathways that these wastes assumed to be there would affect the people living in the area. And the first one that comes to mind would be the ground water area. We worked very closely with the State of Maryland because they had collected an awful lot of information and data.

Mr. Villa can tell you in more detail, if you like, the analysis we split. The bottom line on all this was as summarized by Mr. Eichbaum a moment ago; we see no reason for concluding that there is an imminent substantial threat to public health, immediate—immediate, Congresswoman—at the site now, even if we were to assume that the wastes are inside, through the ground water pathway.

Now, why is there no threat? Well, we have gone through the pollutant analysis, and Mr. Eichbaum compared it to drinking water standards, to SNARL, what he referred to as a SNARL level. These are fancy terms to get a guesstimate as to the impact on human population.

The point is, we came up empty there. We have at Monument Street a facility which we had at the many other places around the region, where we uncover dump sites where material is either spread on top of the land, such as at CMI, or dumped in a bog or swamp with no clay and direct ground water contact.

We have at Monument Street a sanitary facility by design that incorporates much of the features I believe I just heard described relative to Hawkins Point. There is clay beneath the facility. There is some question as to the depth of the clay from one end to the other, 5 feet to 20 feet, I have seen.

There is question as to jointing of the clay. A lot of questions you can ask as to, has it been compacted properly. Well, the point is, there is an awful lot of clay there that acts as a barrier to the ground water. It is working based on this evidence, because we have not seen the levels of ground water contamination you would expect if it was not working.

Above the clay, we have a leachate collection system to collect materials that do come down. Whatever waste and precipitation comes through, the waste hits the leachate collection system and is pumped out, treated and discharged according to valid permit conditions.

Congresswoman, the other pathway we consider—there are really two more—one was the atmospheric pathway. We are very concerned over fumes and odors commonly associated with hazardous waste landfills. Vent caps have been installed to take care of methane gas.

Obviously, if there are other things in there in gaseous form, they could come out the methane gas vents.

So we have been talking to the State these past many weeks now about how we might make sure that there are not hazardous pollutants coming out of the vents. Some of the things we have discussed have included installation, if necessary, based on monitoring, and we have no reason there is a problem yet, but, if necessary, carbon canisters to neutralize organics or make sure we have addressed that pathway.

The third major area, one of direct public contact, Congresswoman, I am not quite sure if we have nailed down totally yet. Obviously, the key parameter here is to limit access to the site. Based on some of the information I have seen, there was some question as to whether or not access was limited totally around the site. But put up a fence is what I am saying basically, Congresswoman.

The last thing I would like to say about Monument with regard to the design is the clay cap, itself. There has been discussion of chrome material being mixed with the cap. My concern is that whatever the ultimate cap is that is put onto this facility, that it be one that minimizes the amount of water that will come down through the facility because the whole concept behind this is after you fill the facility and seal it up, you will get leachate generation for a period of several years, based on the water already in the facility coming down through the waste.

Hopefully, you pump the leachate out, treat it and get to a point where you have maybe not a totally dry facility, but you will see a dramatic tailing off of the leachate generated each day in theory, and it has worked at some already, because, of course, you have the cap preventing new water from coming in.

So it is very important to us and everything I am saying is conditioned upon the fact that there will be an impermeable barrier, relatively, clay barrier over the entire facility. As far as the chrome goes, so long as this material, whether it is or is not removed, does not interfere with any intended use of the facility after it is capped off, then that is of secondary importance to me.

What I am saying is, so long as it doesn't present an imminent substantial threat to people that might use it as a park or shopping center or goodness knows what, if there is going to be another intended use, then I would be concerned that the amount of clay put on top was either sufficient to cover any of this material that may be in there, and that, quite frankly, tests be done to make sure any future intended use would be compatible with conditions at the facility.

Now, if in the alternative the position of the locality, Baltimore, the State, is that this facility will not be used for another intended use other than as a secure—quote, secure—facility, that access will be limited, then I am not so certain these additional tests would be required or an additional third-party consultant need be brought in in order to verify what I have just said.

I have my division directors here, who are responsible for advising me on these matters, and whom I listen to. They will be able to give more details if you should require on the Monument Street landfill and how we came to those conclusions.

Ms. MIKULSKI. We will come back to Monument Street. This is the State's report. From the Governor to me. They recommend it be used as a community park.

Mr. BIBKO. Yes, Congresswoman.

Ms. MIKULSKI. The city wanted to use it to build a supermarket on it.

Mr. BIBKO. Yes, Congresswoman.

Ms. MIKULSKI. Would you build a park on this or a supermarket?

Mr. BIBKO. Based on the information we have reviewed to date, I could not comment on the—whether or not imminent and substantial harm would result from that kind of a use. I can only say that if it were properly closed in accordance with what I have just said, and access were limited to it, that I would not perceive, based on what my people are telling me, any substantial threat to public health associated with the facility through any of the various pathways I have mentioned.

So, to be very, very frank with you, Congresswoman, if that were to be the case, and someone were to propose that use or another use, I am saying that the third-party consultant, if you would, would play a very important role, or could play in addressing that. Depending upon the use, it is going to vary how much cover testing would have to be done. I am assuming this is a facility that would be closed totally with a fence put up around and properly capped when I say I don't envision any contact problems. We don't—we have not analyzed it from that facility. It is a solid waste facility to begin with. I am sure you recognize better than I that in RCRA, Congress kind of got us out of the solid waste business and asked us to devote most of our energies toward hazardous wastes perceived as being a greater problem.

We have, however, managed to work closely with States when a State asks us for help. It was particularly important to do it in this case, given your interest and involvement and where hazardous waste has been identified as being in the facility.

So we have been actively involved and working with the State to try to advise them in this very difficult area.

Ms. MIKULSKI. Why don't you talk about American Recovery and Hawkins Point before I get into questions?

Mr. BIBKO. Yes, ma'am.

With regard to Hawkins Point, it is, of course, a hazardous waste site being operated currently in accordance with the applicable RCRA requirements. I am not saying permit; I am saying requirements. EPA has made a preliminary assessment of the site, Congresswoman, and is presently reviewing the proposed expansion.

EPA will advise the State regarding compliance situation of their request for expansion with applicable EPA regulations. The preliminary assessment indicates that the existing disposal facility is a well-operated facility and the conclusion is based on not only compliance with applicable RCRA requirements, but also inspections that have been undertaken by EPA personnel.

The site has a record of meeting applicable requirements, and we have no reason, nor can I comment, on whether EPA will approve the expansion requested.

American Recovery is, of course, a hazardous waste situation that has been continuing to operate under interim RCRA authority. This site, on the other hand, has a record of environmental problems. The State, we believe, has been addressing these problems through enforcement mechanisms, and EPA has been evaluating their progress. If and when progress is not satisfactory, EPA will consult with the State for the purposes of determining how EPA may assist the State in moving enforcement along consistent with our requirements under the act.

Ms. MIKULSKI. Did anyone else from the Federal Government wish to comment?

Mr. BIBKO. Let me ask my staff. Does any member of the staff have anything they wish to add at this time relevant to the Congresswoman's requests?

Ms. MIKULSKI. Fine. We thank you very much, Mr. Bibko.

I would like to now move to questions, and really will do it item by item and go to the Monument Street Landfill, American Recovery, and finally to Hawkins Point, which seems to be the process by which we have been following this, anyway.

The questions that I have on Monument Street really go both to the State and to EPA. And the questions to both the State and EPA are these.

First question: You and your associates are no doubt acquainted with the problems of the Monument Street landfill. Is there any concern on your part that the agency, either the State or the Federal Government, EPA, does not have the necessary authority to go onsite and conduct the necessary monitoring and assessment at a closed sanitary landfill?

Mr. BIBKO. I guess I could take a shot at that first, Congresswoman. I believe we have the authority to do that. I think we have done just that. We have gone onsite and collected necessary data to allow us to collect the necessary data for the Federal obligation to assure ourselves and have it on record that we have a basis to conclude no imminent threat.

Ms. MIKULSKI. So you do have authority under RCRA to be there?

Mr. BIBKO. Yes, I believe we do.

Mr. EICHBAUM. Under State law, I believe the State does, also.

Ms. MIKULSKI. Don't you have authority under RCRA?

Mr. EICHBAUM. I don't know that we would need RCRA, but if we would, under that Federal law, also.

Ms. MIKULSKI. Did EPA and the State agree to come onsite and conduct the necessary assessments to determine the nature and scope of hazardous waste containment?

Mr. BIBKO. Of hazardous waste containment?

Ms. MIKULSKI. Hazardous waste containment problem.

Mr. BIBKO. Did we agree? Yes, I believe it is fair to say we certainly did, Congresswoman.

Mr. EICHBAUM. Could you repeat the question, please, ma'am?

Ms. MIKULSKI. Did you previously agree to come on the site and conduct the necessary assessments to determine the nature and scope of the hazardous waste containment problem?

Mr. EICHBAUM. We have done that in cooperation with EPA; that is correct.

Ms. MIKULSKI. Did you agree that hazardous drum wastes were placed in the landfill as evidenced by police reports and explosions that occurred at the facility?

Mr. BIBKO. Congresswoman, we have seen the data and reports in the State compilation. On that basis we recognize they exist. I haven't personally, nor have any of my legal or technical people, to my knowledge, been interviewed. They don't have any first hand knowledge of the situation that I know of. Please speak up, fellows, if you do.

I think it was negative.

Ms. MIKULSKI. You don't have first hand knowledge whether or not drums are there. Is that correct?

Mr. BIBKO. That is correct, except that, as I stated earlier, we have reviewed the information I believe the State has just submitted to you. Telephone calls were also received from concerned citizens. We are aware of what you are, I believe, aware of; that it appears to be in the record that hazardous wastes were disposed of at the site.

Ms. MIKULSKI. You know from State sources and statements from concerned citizens. The State has what?

Mr. EICHBAUM. We have the results of our investigations, and that does indicate that there were barrels there with hazardous materials. That is correct.

Ms. MIKULSKI. What was the nature of those investigations?

Mr. EICHBAUM. You have heard a lot of it in the course of the day. But basically in early 1980, the Department of Natural Resources was investigating hazardous waste management problems at American Cooperage. That investigation, through illegal haulers, led them to Monument Street, and there were then both field investigations and ultimately an investigation that was in the nature of preparing for a criminal prosecution, largely against American Cooperage, but deriving material through the work at that time of the health department, solid waste group, as well as DNR, which Mr. Trainor described earlier in the day.

So there was field work that was done, and there was also investigation in the sense of asking questions, conducting interviews, and that kind of activity by natural resources police and other personnel of the State, including the attorney general's office.

Ms. MIKULSKI. In 1980?

Mr. EICHBAUM. That is correct.

Ms. MIKULSKI. Then that American Cooperage investigation led you to the Monument Street—led who to the Monument Street landfill?

Mr. EICHBAUM. I believe it initially was——

Ms. MIKULSKI. State department of health?

Mr. EICHBAUM. It was initially DNR, and they then brought us in.

Ms. MIKULSKI. To do what?

Mr. EICHBAUM. To participate with them. Perhaps Mr. Nelson, do you want to comment?

Mr. NELSON. As a part of that investigation, it broke out this way. The department of natural resources and their natural resource police officers were investigating the criminal side of the investigation against American Cooperage. It actually started as illegal dumping when they found drums along the roadside of North Point Boulevard. There were four haulers involved in four different locations.

Our agreement was that we would deal with the cleanup of American Cooperage and deal with them specifically, because they were in the business as a drum reclaimer and there was some question as to whether it was covered under DHS. They would handle the criminal investigation, so they, in fact, with their staff, did the actual investigations of the landfill and also drivers and haulers.

Ms. MIKULSKI. They—department of natural resources?

Mr. NELSON. That is correct.

Ms. MIKULSKI. What was your involvement, then, or do you know—because you were with the State health and mental hygiene department—with the city of Baltimore? In other words, we knew American Cooperage was illegally dumping. At least that was the nature of the DNR investigation. One of the smoking guns that led to Monument Street landfill.

Mr. NELSON. Yes.

Ms. MIKULSKI. Then who went to see what was going on at the Monument Street landfill?

Mr. NELSON. In fact, both of us were involved in that. But DNR, because the charges were on the disposal of hazardous waste, actually issued the site complaint on the hazardous waste going into Monument Street landfill.

This was in March, as you know. We were right—I don't know exactly where we were in consolidation. We were sort of trying——

Ms. MIKULSKI. I don't care where you were on consolidation.

Mr. NELSON. I am trying to indicate to you who was in charge of who at the time, but the site complaint was issued by a natural resources inspector.

Ms. MIKULSKI. Then what happened to that complaint or citation?

Mr. NELSON. I am not—I personally do not know exactly what happened on that site complaint, myself.

Ms. MIKULSKI. Who had responsibility for dealing with that? You were now consolidated. So who had, who has the responsibility?

Mr. EICHBAUM. Well, we were consolidated as of July 1 of 1980.

Ms. MIKULSKI. This was March?

Mr. EICHBAUM. This was March. I do not remember, and we will try and get for you, who made the decision in terms of what was the appropriate thing to do with the material that was in the landfill.

Ms. MIKULSKI. In your review of your files do you have a record of your new consolidated agency picking up and following through on the midnight dumper at Monument Street?

Mr. EICHBAUM. Yes, we would.

Ms. MIKULSKI. Mr. Trainor said earlier today that he had been meeting with the State. In fact, it was the State who brought to someone's attention in city government, allegedly Mr. Edward Moore, that there were drums, some crushed, some not so crushed, which they then removed—20. Who did that, and who supervised that?

Trainor said that Stanzel, some man named Stanzel, to the best of his recollection, was employed by the State, who then came to city government.

Are you familiar with a man by the name of Stanzel?

Mr. EICHBAUM. Yes, Mr. Stanzel was an employee of the Department of Natural Resources, but, as of July 1, I believe, he became an employee of the Health Department.

Ms. MIKULSKI. So whatever he was doing for DNR——

Mr. EICHBAUM. Shifted entirely as of July 1 to the Health Department; that is correct.

Ms. MIKULSKI. What, then, did Stanzel do with that complaint, since he brought his responsibility with him under this merger or consolidation?

Mr. EICHBAUM. Well, the site complaint would note there was the condition of the illegal dumping there. Then the decision would be made in terms of what to do about it and in terms of a physical remedial action.

Then, second, where it fit in in terms of a prosecutorial action.

Ms. MIKULSKI. What did Stanzel then do? What does your report show? Did or did not Stanzel just put it on hold? Did he make specific recommendations to the city of Baltimore?

Mr. EICHBAUM. I don't want to make a misstatement, because this is obviously very important. But let me tell you what I believe happened, and we will look at the record while we are here. If we can point specifically——

Ms. MIKULSKI. Do you, or do you not know? Do you right now know? I don't want conjecture. Do you, or do you not know?

Mr. EICHBAUM. I would prefer to look at the record a little bit more carefully before I attempt to answer it.

Ms. MIKULSKI. Look at the record and tell me, then, what did Stanzel do? Who did he talk to and what did he advise them to do, and what happened on that basis? And if, in fact, if Stanzel did not do anything, or the people he advised did not do anything, or his advice was not followed, I would like to know why.

You don't have to lean over and do that. You can submit that to me later on, because what you are doing is scurrying through. I don't think it serves the best interest of an appropriate inquiry, and I would rather you look at that report and perhaps pull your files back at the State office building.

Then we really know what happens, rather than you trying to handle several things at one time.

Mr. EICHBAUM. Very good. We will do that.

[The information requested was not available to the subcommittee at the time of printing.]

Ms. MIKULSKI. Fine. Either way, whatever Stanzel did or did not do, there was at least an action that warranted, that indicated that

there was substantial concern about something having happened at the Monument Street landfill. Is that correct?

Mr. EICHBAUM. That is correct.

Ms. MIKULSKI. So that American Cooperage took you there, which would indicate, then, that somebody was worried about what had happened there?

Mr. EICHBAUM. That is correct.

Ms. MIKULSKI. You see, that is why it is so fascinating to me that nothing happened except the pulling out of 20 drums.

Mr. EICHBAUM. Well, that is where I think we part company, Congresswoman. We, in fact, after that, did put in monitoring wells. We did meet with the community. We did monitor the methane gas vents; we did conduct a health study, and we did do a fairly intensive analysis of all of those various points, precisely in order to see if there was a reason why we should be doing anything more than that. And that would be not a typical response.

Ms. MIKULSKI. At what point did EPA and the State of Maryland share samples regarding the Monument Street landfill? You don't know this? You don't know when you two got together? Do you know?

Mr. BIBKO. Yes, Congresswoman. Consistent with your letter, Mr. Villa is here. He has this information and is prepared——

Ms. MIKULSKI. Fine.

Mr. Villa, when, then, did you share, and maybe you ought to read your own records before you come, or at least remember. I remember when they talked to me.

Mr. VILLA. We made a joint inspection on October 23 and October 24, 1981 with the State of Maryland.

Ms. MIKULSKI. When was this, then?

Mr. VILLA. October 23 and October 24.

Ms. MIKULSKI. Mr. Villa, you made a joint inspection. What was the nature of that inspection? In other words, did you just walk around? Did you take samples?

Mr. VILLA. During that inspection we took samples from the four monitoring wells. We took samples from the leachate manhole. Samples were taken from an urban stream entering the site from ARMCO. Samples were taken from a storm water discharge leaving the site.

Ms. MIKULSKI. Mr. Villa, when you use the pronoun "we," who is the "we" that did this? Is it EPA? Was it the State of Maryland?

Mr. VILLA. EPA region III and the State of Maryland.

Ms. MIKULSKI. You supervised that?

Mr. VILLA. That is correct.

Ms. MIKULSKI. Then you took it back to the Annapolis lab and did your test?

Mr. VILLA. Those samples were split with the State. The State had similar samples as we did. We both analyzed it.

Ms. MIKULSKI. Then what happened?

Mr. VILLA. It provided a good check on our analysis.

Ms. MIKULSKI. And what happened?

Mr. VILLA. The monitoring wells were very clean. We noted the presence of about four or five organic compounds, but at very low concentrations, nothing that would present a health hazard.

We noted the presence in the leachate of about 11 or 12 organic compounds. I can get into the specific compounds if you are interested. I think Mr. Fortuna has a copy of the compounds found. We met with the State to discuss these findings.

Would you mind if I read about one page from my prepared text, because it puts some of this in perspective between the time we made the joint sampling inspection and what we did in the next 3 months?

Ms. MIKULSKI. No.

Mr. VILLA. It is the end of a long day.

Ms. MIKULSKI. No. I have all the time to devote to this. You read it.

Mr. VILLA [reading]:

In response to numerous inquiries and citizen concern about the Monument Street site, region III Central Regional laboratory conducted a preliminary inspection on September 16, 1981, a nonsampling inspection. This was followed up by a joint Federal-State sampling inspection conducted on October 23 and October 24, 1981. During the September to December timeframe, we reviewed all available data we could find and searched all the files on the Monument Street landfill.

The State cooperated and made all their files available to us. Two industrial solvents were identified by the search as being disposed of at the Monument Street site. Those two compounds were trichloroethylene and 1,2 dichloroethane.

We reviewed available air data and monitoring well data in order to assess any possible route of exposure or movement of these materials through the site. To date, based on an evaluation of our own data and State data, we have found no route of exposure of these materials from the Monument Street landfill which could expose the surrounding residents to a health hazard.

We have sampled the residents' basements. This was during a rain, right following a rainstorm. We found the water in the basement to be noncontaminated. Aerial photographs of the site have been scrutinized and the site has been ranked by a Mitre model. What this model does, it prioritizes hazardous waste sites based on certain information that is available. Monument Street landfill ranked low in this preliminary evaluation process.

Throughout all of this, we have not found any way in which the health of nearby residents is being threatened. We know there are materials in the landfill. We can identify some of them. By looking at the information that we get from the monitoring wells, we know what materials would be leaving the site.

And if I can jump ahead just for a minute. Based on what I have heard today there are a lot of people that don't believe in the use of monitoring wells. They apparently think we can't find out what we need to know by looking at monitoring well information. We can.

Another site you are working with today and discussing today, namely, American Recovery, is a good example. If one looks at the monitoring well data from American Recovery, one can see very clearly that the use of monitoring wells does, in fact, provide an indication of materials leaching through the soil and contaminating the groundwater system.

So monitoring wells are a valuable tool in this respect.

Ms. MIKULSKI. I am not challenging whether they are valid or not. Do you know about American Recovery?

Mr. VILLA. I opened my mouth.

Ms. MIKULSKI. We will come back to you on that. Not about opening your mouth. The Mitre model that you used in terms of saying that the Monument Street was a low-ranked thing, is that the Mitre model related to cleanup or assessment? Mitre models are used primarily for cleanup, aren't they?

Mr. VILLA. They are being used right now in the Superfund program as a ranking tool.

Ms. MIKULSKI. I have your memo to the files dated December 16. According to the files, you met with a variety of officials, a variety

of officials were present, and also you met with Graham Wisner, the attorney for the Monument Street Improvement Association.

Could you tell us what was decided at that meeting?

Mr. VILLA. All right. The first meeting was held in December with Mr. Wisner, Mr. James Pittman from the Health Department, and Howard Wilson, of my staff.

At that meeting, in response to the concerns expressed by Mr. Wisner, we tentatively agreed to conduct a subsurface sampling study in the northeast corner of the Monument Street landfill. This was predicated upon approval both from the regional office in Philadelphia and from the State health department and city people, since they are the owners of the site. The meeting held on February 1——

Ms. MIKULSKI. Excuse me, Mr. Villa, I don't mean to interrupt. Could you tell me, could you repeat, what you just said about the study being predicated on who for what reason?

Mr. VILLA. We were proposing to Mr. Wisner to conduct a study. Obviously after the meeting I was going to check with the regional office and inform them what I had proposed.

At the same time, since the landfill is owned by the city, and the State is so involved with the landfill, obviously I hoped we could make this a joint inspection.

Ms. MIKULSKI. Mr. Villa, is it the standard operating practice of the Department of Environmental Protection to allow the owner of a landfill, whether that person be public or private, to veto an inspection of that site?

Mr. VILLA. Not necessarily veto. In this particular case, if we had known of a health hazard, then we would have had the legal right to go in and conduct a sampling operation. In the absence of that danger, we really had no legal basis to proceed.

Ms. MIKULSKI. You said earlier you had all the authority you needed under RCRA to proceed. No, go ahead.

Mr. VILLA. All right. There are two issues here. I want to put them both on the table. No. 1, we know there are industrial waste materials buried at that landfill, but they are contained. We are not seeing a release of those materials to the atmosphere, through the ground water, or surface runoff.

The second issue here is, there is a question of knowing exactly what are the nature of the materials. Since records were not kept of the materials that went into that landfill, there is no way short of doing extraordinary sampling programs, that we are going to know exactly what is there.

As long as we do not have an indication that there is a problem or a danger to someone nearby, the strategy for doing something with those materials that may be there is not going to be changed. They are not representing a danger right now.

Ms. MIKULSKI. Mr. Villa, you are saying to the committee that since records were not kept to tell you what is in the landfill, you can't go and investigate what is in the landfill. Is that correct?

Mr. VILLA. No; I am saying to you, since the monitoring well data show that that material is contained, that we have no basis on which to proceed.

Ms. MIKULSKI. Let me go back to your memo to the files. You state, then, that—let me come back. What about the legal authori-

ty? Do you, or do you not, have the legal authority to go in and conduct these tests?

Mr. VILLA. I suppose we do have legal authority. I am thinking of section 7003, and I wish you would correct me if I am wrong——

Ms. MIKULSKI. What about 3013, Mr. Fortuna—you do this every day.

Mr. VILLA. Now wait a minute. All right. I want you to understand: I am not in the program office in Philadelphia. We are a laboratory. I want you to understand what my responsibility is.

Ms. MIKULSKI. Yes; and I want you to know that I expect any public official to know the authorization under which they operate. Go ahead. I am not trying to spite you, but I mean, if you are going to go in and do something, I am sure you know when you have intervened under what authority you have.

Mr. VILLA. We have a number of sites that are pressing in the same area. We are doing sites in several States. When this site ranked out low in the Mitre model and after all our evaluations and looking at data, this was prioritized as being a low-priority site. Therefore, it was not deemed necessary to go ahead and go into the site at this time.

Ms. MIKULSKI. December 16, 1981, memo to the file from Orterio Villa, director, quoting a paragraph, this is after the identification of the request by Mr. Graham Wisner in terms of what did the community want. The community wanted, one, is that we, EPA, review all new data from the monitoring wells and make it available to the citizens he represents. And, two, we further investigate the northeast corner of the site for contamination from unauthorized hazardous waste disposal operations.

New paragraph: These requests seem reasonable. Pending clearance from the region and hopefully concurrence from Ron Nelson, Maryland Department of Health and Mental Hygiene, I propose we review and disseminate the information on monitoring wells and plan to conduct a sampling operation in the northeast corner of the site.

Is that your memo?

Mr. VILLA. It certainly is, and I did propose that.

Ms. MIKULSKI. Then you backed off from it?

Mr. VILLA. We got additional information, and based on the ranking of that site——

Ms. MIKULSKI. What was the additional information, and when did you get it?

Mr. VILLA. I am talking about the same information we are all looking at now, the total package, information in the files of the State which was slow coming out; we got it little by little.

Ms. MIKULSKI. When did you get it, and when did you make the decision not to pursue?

Mr. VILLA. I have not made a decision not to pursue. At a meeting on February 1 with Mr. Nelson and officials of the city, it was obvious at that meeting that the State, for reasons they have already mentioned, were not interested in conducting a joint inspection.

Mr. Nelson already addressed, or Mr. Eichbaum—they thought that the dangers presented either by methane gas explosions or puncturing the clay liner would create too much of a hazard. But

as a result of that meeting, to make a long story short, we reevaluated our proposal, and we have not, obviously, done anything further as far as going into the site.

We did keep working, getting more information that was available.

Ms. MIKULSKI. But you were all set to go; right?

Mr. VILLA. Yes.

Ms. MIKULSKI. You thought it was a reasonable request?

Mr. VILLA. The citizens were very concerned. Yes.

Ms. MIKULSKI. As a technician, not as a policymaker, not as an enforcer, but as one who does the data by which then other decisions are made, you felt it was reasonable?

Mr. VILLA. Yes.

Ms. MIKULSKI. You feel you could do a sample of the northeast corner of the site?

Mr. VILLA. I felt it could be done. Parts of it would be done by a contract team because of special equipment to be used, which we don't have. But I felt it could be done.

Ms. MIKULSKI. But as a scientist, I believe it is engineering——

Mr. VILLA. Chemist.

Ms. MIKULSKI. Excuse me, as a chemist, as an experienced person, which you have indicated earlier, you felt that it could be done; that it would not—did you feel it would constitute a danger to the community to do a sampling operation like that in the northeast corner of the site?

Mr. VILLA. No.

Ms. MIKULSKI. Yet the State says that it did not want to do that because it constituted a danger. It is an interesting juxtaposition between the two. You have your professional opinion, and obviously they have theirs, both of which are contradictory, and, therefore, would be presumed that neither is definitive. Is that correct?

Mr. Bibko, you have had your hand up. I presume it is not to leave the room.

Mr. BIBKO. No comment, Congresswoman. No, I had my hand up because I think, as Mr. Villa was indicating, I made the decision to, in effect, revise his previous decision, or choose to ignore his previous decision, based on, after acquired information that, I assume it is after acquired, whether he had it at the time he originally made the recommendation, I don't know, but at the time I made an administrative decision consistent with need to protect public health upon reviewing the data with Stan Laskowski, my director of S&A that Mr. Eichbaum referred to, indicating that we did not appear to have the kind of threat we thought we might have initially, you know, when the idea of hazardous waste being put in the facility was first raised. Again, the water quality data, air quality data, et cetera.

Congresswoman, I made that decision. It rests solely with me, based on my belief and present belief that there is no immediate imminent threat associated with the facility.

If I can just take 1 minute to perhaps say the most important, make the most important point that might help clarify why people sitting in this room might perceive EPA as being insensitive, when in reality, while we may not agree at least, I want you to understand why we, why I, did what I did.

The issue of how much waste is there, whether it is 100 or 1,200, really is not as important as it may at first seem.

The reason is as follows: Let's assume that there are the kinds of wastes that Mr. Villa has identified as being possibly there, based on leachate concentrations. Let's assume the number is twice the number of drums that anybody from the association even can guess might be in there. What do I do if I would find an imminent threat? Say, for example, I had ground water contamination, and we find this at many other sites that do not have the clay, et cetera.

I would most likely come right back and say, for openers, "Let's put a clay cap on the facility." Well, it has already got one. I would come back and say, "Gee whiz, can we possibly put in a leachate system," again working with tax dollars in this case, Superfund money, perhaps. Of course, it has a leachate system.

I would say any leachate collected must be treated and disposed of according to permit. But that is being done.

The next thing is to look at the clay. Is there any way we could inject the clay liner if it was feasible underneath these wastes? Removal of wastes from a facility that is totally undesigned is, in many cases, unusual; in situ treatment—in place—is often recommended, if possible, for the simple reason you don't want to move this stuff through the streets. When you are talking about great volumes, it, economically, quite frankly, could be an impossible task, very impractical.

So normally you try to contain the situation, as RCRA asks us to do at a particular site.

So I guess what I am saying, Congresswoman, is that even if you know we were to go in there and dig up the corner of the site, and say we find five barrels that were decomposed a long time ago and find some material that is saturated with hazardous wastes of some kind, so what?

OK, I have got this facility there. I cannot right now tell you any other site where we would require any more after finding relatively small, compared with the total amount of waste, at the site. Then what do I do? Go to another area and dig? Some of my staff suggests——

Ms. MIKULSKI. You mean at the same landfill site?

Mr. BIBKO. Yes, Congresswoman. The point is, if I did, through whatever methods, document where the disintegrated drums are, chances are many of them would be by this time, where the waste is, the first thing I would probably do is say containment. The first purpose of 7003 is to contain it.

Ms. MIKULSKI. I have not asked you what would you do. The point of the hearing is citizen response, the people's right to know how people are involved. Then what the next steps would be. We can talk about what your excavation or evacuation or contingency plans are. The fact is that EPA agreed to do a study. There were two parts of it. One was to take samples and tell the people what was there. The other was to do some type of test siting at the northeast corner where the State records indicate that illegal dumping had occurred.

No one is saying it is very pervasive. We are talking only about this northeast corner. You said that it was a reasonable request, Mr. Villa. You then decided, Mr. Bibko, that it was not necessary.

Mr. BIBKO. That is correct, Congresswoman.

Ms. MIKULSKI. And all the people asked was for the right, or the right to know, what was there. That is all they had been asking for. They have not, at least in my contact, asked for major excavations or whatever. That is all they asked. When I received your letter to me on January 22, 6 weeks after your memo to the file, where this meeting took place between Wisner, yourself, and other officials, you said you were going to do it.

The community and I communicated. And there seemed to be an agreement that we were going to get what was—we did not know if it was molasses in there, catsup in there, PCB's—nobody knew. But at least now we would know, and that was all they were asking at the time.

Mr. BIBKO. Congresswoman, I believe I indicated I would take the steps necessary in order to contain the situation consistent with RCRA. In all due respect, Congresswoman, I know these are hard things to say, but I feel compelled to say it.

As an EPA administrator, I could not logically justify initiating digging of this kind in a facility when I had no basis under RCRA for allowing me any idea whatsoever that this facility was causing a threat to public health after looking in great detail.

And it was really the ground water data, the quality of the data that we found.

Ms. MIKULSKI. That is not RCRA. The legislation does not have that specific criteria. It was your judgment.

Mr. BIBKO. Well, Congresswoman, I can always be wrong in my interpretation of the law, but I believe the primary premise of 7003 of RCRA is to apply in situations where there is an imminent—I think the language is imminent—and substantial threat to public health associated with the site.

Then we go this laborious legal route. So, frankly, we were quite happy, if you would, to find that there was not this threat to health based on the ground water data.

Now, it did not stop there. We also recommended, as I believe is in the record, that we are not going to just stop monitoring. I mean, the people have a right to continue to know that nothing does change at this facility while the clay cap is being installed. Hopefully, the likelihood of any problems will decrease. But in the event we do miss something that we do not conceive of at this time, that we continue to monitor the site.

I can go on record now; this is something we have not offered yet, but the concern of the people here, if the number of monitoring wells that are in the area is shown to be a significant issue, that you are not able to really determine impact, if the number of parameters to be analyzed should be increased or decreased, you know, this is certainly something we want to talk to and talk about with the State.

So anything we can do to continue to feel the way we feel now, we want to do, so long as it is within reason. That would include cosponsoring with the State any third party, reasonably agreeable third-party studies needed to set the people's feelings, at least more

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at ease, hopefully, that they can trust their Government and that conclusions we have reached are indeed valid.

Ms. MIKULSKI. Do you investigate where there is potential hazard?

Mr. BIBKO. Yes. Well, this gets into some charts we are submitting to you, Congresswoman, as attachments to our testimony. But basically under RCRA we have two mechanisms for investigating potential hazards: under RCRA, one, and another under Superfund. Under RCRA, we have what has been referred to as a dump site list that has been developed, indicating those facilities which have been abandoned.

These are ones I referred to a moment ago, that I wish had clay under them; that are scattered about. We go through a procedure of looking for, doing the same kinds of analysis we did at Monument Street, but, frankly, nowhere near as great the detail we have done on Monument Street, because of your interest, legitimate concerns of the citizens, and, as requested by the State.

So we do look at this dump site list. I think we have 700 such sites in the region, none of which, to my knowledge, have any of the features we have here. There may be a few that have some of the features, but not all of them at Monument.

We whittled that list down to 300 prime candidates, I believe. I can be corrected on this by my people, but 300 candidates we are still evaluating to see whether they present substantial harm. Under eight we have taken enforcement, where we have found ground water contamination, air pathway, and so forth.

EPA Region III, I think, led the nation, I am not positive, but I think led the nation in RCRA 7003 actions.

Last month, or 2 months ago, we filed law enforcement acts. Rather, we referred law enforcement actions, more out of region III, than ever filed in 1 month out of EPA.

We have ranked sites according to the Mitre model. We came up with 15 sites within the region. CMI, of course, working very closely with the State, was the first site in the country to be totally cleaned up.

So we are looking at the bad problem actors under Superfund as well. We are about to come out with a revised 400 list of potential candidates for Superfund. And again consistent with what the law says, we work very, very closely with the State and discuss almost daily the various parameters that go into deciding which sites are going to be selected. The reason there, I think, is extremely important, Congresswoman, because under the law, we cannot go ahead with the Superfund remedial action, such as has occurred at CMI, unless the State concurs. We need, as I understand the law, 10 percent or more contribution from the State before we can go ahead and make this kind of a cleanup.

Ms. MIKULSKI. That is a Superfund clean-up. Let's go back, however, to assessment. Nobody's saying Monument Street is Superfund. Nobody's saying you have to go in and clean it up.

We are just asking right now for an assessment. My question to you, then, because we talked about State involvement, does a State have veto power in terms of EPA investigations?

Mr. BIBKO. Not in my region, no.

Ms. MIKULSKI. In any region?

Mr. BIBKO. No. My answer is no. To my knowledge, the State does not, given the legislation we have and authority under RCRA, no.

Ms. MIKULSKI. Does local government have veto power?

Mr. BIBKO. No, Congresswoman. I believe Congress was clear in wanting to give the EPA the ability to investigate and mitigate and abate imminent substantial harm.

Ms. MIKULSKI. Then, Mr. Villa, why did you need the concurrence from Ron Nelson?

Mr. LASKOWSKI. I am the division director and he reports to me.

Ms. MIKULSKI. He wrote the memo. Let him say.

Mr. VILLA. I didn't need clearance. I wanted this to be a joint State-EPA effort, as the study in October was.

Ms. MIKULSKI. No, clearance from the region and concurrence from Nelson.

Mr. VILLA. I wanted it to be a joint inspection, as it was previously.

Ms. MIKULSKI. Suppose he said no, which they essentially did? Then what do you do? What do you do when a State says no?

Mr. VILLA. The whole Monument Street situation was discussed with the regional office, obviously. With my superiors in the regional office. And again, going back to what Mr. Bibko said, there were a lot of other sites. This site is well managed, well contained.

Ms. MIKULSKI. Well managed? The city doesn't even keep—you told me just a few minutes ago you don't even know that there were no records. Because there were no records, Trainor didn't even know what was going on.

Mr. VILLA. I am not talking about the past when the site was active. I am saying the site as constructed right now with the leachate system, a good groundwater monitoring program.

Ms. MIKULSKI. When did that occur and why? This well managed——

Mr. VILLA. That went into the record today when that occurred.

Ms. MIKULSKI. Yet it occurred when the citizens began to protest. That is when it began to occur.

Mr. VILLA. I don't argue with that. Mr. Laskowski would like to make a statement.

Mr. LASKOWSKI. I'd like to try to address the way we address each of these situations. I am the division director in charge of emergency response and the field activities. Steve Wassersug here is in charge of the overall hazardous waste program. I would like to first state that I have been involved with these emergency-type situations and field investigation situations as they come into the region for about a year and a half.

Ms. MIKULSKI. Mr. Laskowski, nobody said this was an emergency situation.

Mr. LASKOWSKI. I am just giving that by way of background as to what my responsibilities are to set the stage so I can better explain what we did at this site.

Ms. MIKULSKI. You gave your background earlier. Let's move on.

Mr. LASKOWSKI. When we get a situation or request into the region, we evaluate each request. Each one of these situations is unique.

I have not found any one to be the same as the other yet. In this situation, we discussed several things, myself, Mr. Villa and Mr. Bibko.

Generally, we can do some of the following things at a site like this. We can drill as was mentioned earlier and try to get core samples.

We could look through old photographs to see if they shed any light or information on the situation. We could take samples, either the ground water, the discharge or any other environmental samples.

And upon request, we could look at the potential health effects. Usually what we do is a mixture of some of the above.

In this situation, after discussing it, we did almost all those things. I could tell you we have spent more time on Monument Street than we have on any other landfill in my division in the last year and a half.

We did look at old photographs to see if they would shed any light on perhaps illegal dumping in the past. We sampled. We also had quality assurance activities with the State to insure their data was good.

We sent the health information to CDC. Mr. Bibko's letter to you, I believe, says we will investigate the northest corner. It does not say we would drill. The northeast corner.

To investigate it, we got the photos, we interpreted the photos. We considered drilling. We considered the use of other devices such as radar, magnetometer, electrical resistivity.

We considered all these. We based on the fact that there is a clay liner there, that there are monitoring wells down-gradient, that there is a cover being put over. We thought the best strategy in the situation was to continue to sample and ensure that the stuff was contained.

The reasons we ruled out some of the other areas, frankly, is the State had a concern on the drilling. We were not able to evaluate if that would be a valid concern or not, because we didn't have enough information.

But the use of the radar and other type devices, we reviewed these possibilities, had a consultant look at these, but we felt since there are, as we understand it, utilities such as refrigerators and stoves in the landfill, that that may not be the best use of our resources, probably would not tell us much more information than we already know.

So I just give you this by way of background. You are right that we did, through Mr. Villa, initially make the statement that we would drill. But then, in the context of all these other things we did, we thought that that was not wise.

Ms. MIKULSKI. At a congressional hearing held in Washington, the Monument Street landfill was raised by me. In the first official testimony before the committee by Ms. Rita Lavelle, the new director in this area of solid waste, she said to me that EPA was now instituting some type of contract on doing a study of how to do a study at Monument Street based on some of the technical questions I believe that you had raised.

That then indicated to me, or I assumed that then you were then proceeding if you were doing a study on how to do the study.

That was my understanding of that dialog with Ms. Lavelle. In fact, are you doing the study on how to do the study, or have you completed your study of that study?

Mr. LASKOWSKI. It refers to perhaps two things. One would be that we did ask, as I indicated, our consultant to look at other techniques that would not raise the concerns of damaging the integrity of the landfill or any explosion concerns the State had.

That was using the radar, using the magnetometer, those kinds of devices. That is one consultant's advice.

The other is the third-party consultant that the State is going to hire to evaluate the best way to handle the situation.

Ms. MIKULSKI. What level of contamination in the monitoring wells would be necessary to trigger action?

Mr. LASKOWSKI. I——

Mr. BIBKO. Congresswoman, I think if I may, I think it is policy, based on the technical information supplied from Stan and the technical people, would represent levels considerably closer or above health effect levels established in Washington and the scientific literature.

I think this whole area of how much impact do you have before it is an imminent health area is, I think, very gray. I think the scientists themselves, and I speak from some first-hand knowledge here, haven't been able to come up with firm numbers but general broad ranges. I think just to conclude, and let Stan talk, from a policy viewpoint, looking at the numbers through Stan Laskowski's eyes and Steve Wassersug's eyes, getting their opinion, that were generated at Monument, the ranges weren't close.

Therefore, I made a policy decision there was no imminent substantial threat.

Ms. MIKULSKI. Monitoring wells seems to be a standard operating technique. Mr. Villa indicated that they are a very fine technique. I am not quarreling with scientific methodology.

My question was not about Monument Street. My question was what level of contamination in monitoring wells are necessary before it triggers, or do you do it case-by-case? Do you rank it? Do you have to have concurrence?

Is everyone reinventing the wheel?

Mr. LASKOWSKI. Let me try to address that. As I said before, I think each of the situations is unique. I have not seen two of the same yet.

What I would recommend is that if the standards and criteria EPA has set for such things as drinking water, even though drinking water is not the driving force at Monument Street, but if the levels were as high as drinking water standards, or if there was evidence that there was significant increases toward the drinking water standard levels, and other water quality criteria, at that point, I would suggest we take more remedial action.

But at the very low levels we saw at Monument Street, I could not in good faith recommend that.

Mr. BIBKO. May I please add something to that that might appear somewhat contradictory? I am not so certain from a policy viewpoint that even if the levels did hit drinking water standards unless it was across the board for every one of them and they were

really in excess, that that would necessarily trigger a policy determination for action.

It would depend on the use of the water. Certainly if it was used as drinking water supply, definitely, yes. If it wasn't, then I think it would be in kind of an area where we would look at the situation, what particular pollutant are we talking about, what is the threat to public health associated with it?

Many of the drinking water standards themselves, I say, are kind of gray area numbers and we do have many cases, I think, my personal opinion, having been involved in this field for a long time, where there are ubiquitous pollutants out there that may not have high toxicity but they are pretty well spread out in a lot of different places due to past contamination.

So it is kind of a hard judgment call. I am not trying to evade your question, but just because something does trigger a drinking water standard, first I would ask is it used for drinking? If it is, that would make it clear in my mind.

Otherwise, I am not sure.

Ms. MIKULSKI. Would you drink the water coming out of Monument Street landfill now in those monitoring wells?

Mr. BIBKO. I think Governor Carey was asked that once on a glass of PCB's once and he did it.

Ms. MIKULSKI. We all know what's happened to Governor Carey. Maybe that is when he got involved in his new marriage.

Mr. BIBKO. No, I don't mean to be nonresponsive, but whether I would drink the water out of the wells, I really don't know.

I believe the data that has been put together on meeting water quality standards, but I doubt seriously if I would drink water out of any well, you know.

Ms. MIKULSKI. Where you are doing leachate monitoring. I am not going to try to harass you, nor will I produce, as I thought about, water from Monument Street and then just watch everyone here drink it. Because that would be, I think, a humiliating tactic and I would also fear for your health.

I am not going to do that. I just want you to know I thought about it.

Mr. BIBKO. Thank you.

Mr. FORTUNA. For purposes of clarifying your last statement, you are saying, even if all the down-gradient wells, two, three, and four, showed levels in excess of the drinking water standards, that that would not necessarily precipitate any action, even monitoring, testing, anything of that sort?

Mr. BIBKO. No. For remedial—on remedial, I would want to know for example, as you might expect, I would like to know whether it was just a temporary blip, one that showed up, or whether it had increased over a period of time or sustained over a period of time.

Mr. FORTUNA. It would have to be continuing and enduring?

Mr. BIBKO. That is one point. Another point, particularly with regard to Monument, from what my technical people tell me, the upper gradient wells are showing greater amounts of material. So I would want to know where it is coming from.

No, I am not telling you if drinking water standards were being consistently violated, something we would be sure of, that I would be at ease.

Definitely not. I would be very concerned and might well do what Stan is suggesting and recommend that. All I am saying is that we have all these variables to consider.

Just because a drinking water program levels is exceeded over a short period of time, does that mean it is due to the facility, the example I just gave you, it could be something else.

Mr. FORTUNA. Would you acknowledge there is a different level of evidence perhaps needed to justify remedial action versus further testing, monitoring?

Mr. BIBKO. I am sorry, no. I don't mean to be obstinate. I think perhaps the reason there is so much misunderstanding here, I don't think more efficiency is needed. If I did, I would look for it, except we have to continue to monitor the water as we are now.

Mr. FORTUNA. There are different thresholds for justifying further testing?

Mr. BIBKO. I think that is a fair statement. If we were to find dramatic differences, we would consider other options.

Mr. FORTUNA. Are you familiar with the announcement made at the April 21 hearing, about further assessment activities at the site. There was a contractor onsite just the day before the hearing, coincidentally. Can you amplify on this?

Mr. BIBKO. No. In all honesty, I speak to Rita Lavelle quite a bit about a number of things. She never mentioned it to me. I was, however, aware of the contractor study only from reading some of the information that came from Stan and Mr. Villa after the fact.

Again, I know I am not going to be a terribly popular guy by making these statements, but frankly, had I known about our involving a contractor in this at the time, I would have questioned it seriously, given the fact that I didn't see a legitimate basis for concluding that my statutory, regulatory obligation had been met.

That is, we have sampled the water and the air. There is no imminent substantial harm.

Mr. FORTUNA. In your judgment.

Mr. BIBKO. Absolutely, sir, based on, again, my division directors, and if I may, one bit of personal comment about something I feel so strongly about.

My division directors are the same people who have been here through successive administrations. I have not changed one single one of them.

There are no hearts and flowers. These are the guys that have been here. Stan has been here 10 years. I rely on them.

I don't think I have ever made a decision yet at EPA that has gone against positions put to me by a division director. When I saw other memos that said dig in the corner, I said, my God, this doesn't seem consistent from what I have heard from Stan and the others——

Ms. MIKULSKI. I don't mean to cut you short. It is 5:30. I don't need to know what went through your mind for the third time on this.

Mr. FORTUNA. It would be very helpful to the subcommittee if you would confer with Ms. Lavelle and provide for the subcommittee a position that both you and she concur upon as to what the further course of EPA, at this site, is going to be, if any.

After all, what is your relationship with Ms. Lavelle? Do you override her determinations?

Mr. BIBKO. No, sir, I report to the administrator and Ms. Lavelle is in charge of the hazardous waste programs. I will do as you suggest, and to the extent there are inconsistencies, I will report it.

Congresswoman, if it is proper procedure, could I supplement the record, if I were to provide other parties with information on new matters that have come up today that were mentioned today that were outside of the original letter, but came up, reference to pollution sources in the area, enforcement policy.

I would be happy to supplement the record if that is proper. If not, I will certainly stand on your ruling.

Ms. MIKULSKI. You can supplement the record. Just so it is new and we just don't repeat what's been said here four times.

Mr. BIBKO. Thank you, and I will check with Rita on that point.

Mr. FORTUNA. Is it your understanding that the basic standard for any action under RCRA is the imminent substantial danger provision of 7003? Is that the standard that is pervasive throughout the Act?

Mr. BIBKO. For containment, Mr. Fortuna, it is my understanding; yes—as it applies to this situation at Monument.

Mr. FORTUNA. What about other activities?

Mr. BIBKO. There are administrative orders aimed in the same direction, I believe.

Mr. FORTUNA. 3004 of RCRA establishes final standards for treatment, storage, and disposal facilities. Do you know what the health protection standard under that section is?

Mr. BIBKO. I am not sure there is a basic—I thought those were design standards, were they not?

Mr. FORTUNA. No, a specific health standard applies; "actions as may be necessary to protect public health." The imminent and substantial standard is not one that applies to every action under RCRA.

Mr. BIBKO. Excuse me, I would be happy to touch base with my lawyer on it and supplement the record.

[The following information was received for the record:]

EPA has authority under RCRA Section 3008 to issue administrative orders and take civil and criminal actions for violations of the Act. RCRA Section 3004 permit standards are related to Sections 3008 and 7003 only in the sense that permit standards and individual permits are intended to protect human health and the environment.

Mr. FORTUNA. Are you familiar with section 3013 of RCRA?

Mr. BIBKO. Not offhand.

Mr. FORTUNA. The title is "Monitoring Analysis and Testing." Are you familiar with the health standard for further action under that particular provision?

Mr. BIBKO. The right to go in and monitor? The health standard that triggers—as I said, you see, I don't see any limitations on us.

That is why I can't, when you mention a number of an act, if you had told me do we have the monitoring right, I would have answered as I did a moment ago, yes, we do.

Mr. FORTUNA. What is the standard?

Mr. BIBKO. We have the right to inspect in general routinely under RCRA——

Mr. FORTUNA. What type of general conditions must be met before the action is taken?

Mr. BIBKO. I don't think there are any general conditions that must be met. I think if a source lists itself as a facility, they are subject to the full strength of the law, which is for us or the State to inspect at any time to make sure there is compliance with the law.

Mr. FORTUNA. For your purposes and the record, there is a standard in 3013. I will read it to you. It says, "The agency shall take such action regarding monitoring, testing and analysis as where such situations may present a substantial hazard to human health," which is contrasted with the imminent and substantial standard under containment, remedial action under section 7003.

Mr. BIBKO. I am sorry, sir, I don't see the relevance. In any event, we did it——

Mr. FORTUNA. The relevance is that there is a substantial hazard standard for monitoring and testing versus imminent and substantial standard under section 7003. The standard for testing is less burdensome upon the agency. That is highly relevant.

You also mention in your statement that essentially it is your view that Congress intended for "EPA to get out of the solid waste business."

Could you amplify on that just a little?

Mr. BIBKO. Not without, in too great detail, without seeking counsel. But in general, I think within the agency, we have seen great emphasis on hazardous waste with RCRA and Superfund legislation.

We still retain considerable authority to work closely with the States in regulating solid waste. The part D solid waste plans and approving the plans of the State.

But, again, Congress, I think, intended the Federal Government to get not only out of solid waste, but air and clean water, but through delegation since every environmental law, including the one you are referring to, assumes delegation of Federal responsibilities to the States.

Mr. FORTUNA. I would just like to read you a section on approval of State plans under 4007.

Ms. MIKULSKI. I am on the Health and Environment Committee, the Waxman committee, as well as this, Clean Water. Right now we have a national obsession called the Clean Air Act.

When we delegate, it is not meant for the Federal Government to abandon its responsibility. It is meant that the Government hopefully—we are not getting out of the business. Perhaps your interpretation of Federal responsibility and delegation is abandonment of responsibility. Ours is not.

We are going to be there as long as I know the representatives of Congress that I am part of, we are going to be there in air, we are going to be there in water, we are going to be there in hazardous and nuclear waste and so on.

Hopefully, we can develop full partnerships. But if this administration thinks its relationship with State government is to dump something on them the way we have been dumping this hazardous toxic waste and abandon them and leave them twisting in the wind

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with all the responsibility and none of the resources, I would beg to differ with you.

Mr. BIBKO. May I please comment on that? It is very important, I think, for everybody to understand that that is not the way we approach delegation, particularly enforcement. I might give an example.

We have heard this morning and today an awful lot of comment about absence of enforcement. An awful lot is enforcement of the conditions that might have been brought forward occurred long before this administration came in.

I am not going to talk administration versus administration. What I am going to say, though, is that I am now in charge of enforcement for region 3. We have reorganized our enforcement division and are trying to make sure that the kinds of enforcement actions that result in some meaningful environmental gain are brought about.

And that we are not simply taking enforcement actions that don't result in environmental gain. We are working very closely with the States to try and supplement their enforcement capabilities with some of ours.

My EPA attorneys will be available to work closely with Bill Eichbaum's people in bringing cases and dividing the responsibility.

Perhaps this will offset some of the reductions they have faced in other grant moneys and other areas. My point is that enforcement is the key point of this administration.

I think some of the problems we have had in enforcement before have been due frankly to the fact that a lot of times lawyers would bring cases because they were interesting cases, legally. Many of my attorneys would go——

Ms. MIKULSKI. That is conjectural on your part. I would like to proceed with what we are doing here. In the area of enforcement, at a Washington hearing we asked you, the guy that was then fired, how many cases had been brought in the last year.

The record was dismal. Now I know that you have beefed up your enforcement. I know that a number of cases have been forwarded.

Incidentally and coincidentally, perhaps, they coincide with the 4-year old hearings.

Mr. FORTUNA. Regarding the requirements and responsibilities of the agency for solid waste management and the approval of State plans; for the record and your purposes, Mr. Bibko, it reads the administrator, "shall review approved plans from time to time."

"If he determines revisions or corrections are necessary to bring such plans into compliance with minimum requirements, he shall after opportunity for public hearing, withdraw his approval of such plan."

"Such withdrawal of approval shall cease to be effective upon a determination that such State plans comply with minimum requirements." Congressional Research Service has rendered a legal opinion for the subcommittee and they state these are nondiscretionary judicially reviewable responsibilities under the Administrative Procedures Act.

I would point out to you that Congress did not intend for EPA to "get out of the solid waste business."

Mr. BIBKO. I have no basis to either concur with what you are saying or go against it without analyzing the section. I might point out, Mr. Fortuna, in all honesty, I am the regional administrator. As far as what is going on in Congress and what the national situation is, most of this comes down to me through my division directors, that report to me, but really are my link to the assistant administrators in Washington.

So my guy in water keeps up on water. When he advises me, this is all taken into account.

Mr. FORTUNA. I understand that you are not to be familiar with every aspect of every program but your statement that EPA is to get out of the solid waste business is just totally incorrect.

Mr. BIBKO. I hope I explained it a little better.

Mr. FORTUNA. There has been very little distinction between hazardous and solid waste management until recent years.

Several States have just recently established some distinction between hazardous and solid waste management and disposal. Monument Street is such an example. Lowry landfill in Colorado is another such example. Those are only two.

I was wondering if you might have just a rough estimate of how many of the 115 Superfund sites are facilities which accepted a combination of hazardous and solid waste?

Mr. BIBKO. Of the 115? Well, I will certainly defer to Stan, but I would guess again, some, I am sure they all they are primarily hazardous wastes, I would imagine.

Mr. LASKOWSKI. That is national, 115, of course. It is our understanding that all these 115 have industrial waste in them.

Mr. FORTUNA. No, I am saying facilities that have essentially accepted a combination of garbage and hazardous wastes, like Monument Street.

Mr. LASKOWSKI. We can only speak to our region, of course, not knowing what goes on in detail in the other 9 regions, but I would say in our region, out of the 15 or 16 I believe we have on that list, that all are primarily industrial waste situations that may happen to have some sanitary solid wastes, yes.

Mr. FORTUNA. For the record, in the information you provided the subcommittee prior to the April 21 hearing from the EPA, the answer is 65 out of the 115 are facilities that accepted combinations.

One last question. Mr. Bibko, what would be your rough estimate of how many solid and hazardous waste disposal facilities there are in the country?

Mr. BIBKO. Again, that is a hard question to answer. How many there are period?

Mr. FORTUNA. Yes, total.

Mr. BIBKO. I think 10,000 or so dump sites, originally identified, but I think I may have missed a few.

Mr. FORTUNA. 10,000 represents the number of interim status hazardous waste facilities. The agency estimates approximately 360,000 waste disposal facilities in the United States.

Mr. BIBKO. In all due respect, Mr. Fortuna, maybe these questions are better directed toward Rita Lavelle——

Mr. FORTUNA. I am not expecting an exact response.

Mr. BIBKO. I am sorry, I can't help you.

Mr. FORTUNA. The point of this discussion is that there is, based on past practices, very little distinction between the disposal of hazardous and solid waste. There are a lot of these facilities out there.

To come out and make the statement that EPA is to get out of the business of solid waste is really to a certain extent saying we are going to disregard some of the hazardous problems, too.

Mr. BIBKO. I think really it is a shifting of emphasis. We have seen it under the Clean Air Act and Clean Water Act, we shift emphasis to where it is needed the most. That is kind of what I was trying to get across to you when I made that statement.

Ms. MIKULSKI. I think what Mr. Fortuna wanted to demonstrate was the degree and depth of this problem and to try to separate it out.

No more than you can separate what has been crushed in those drums, you can't really separate out some of these hazardous and solid waste disposals. There are other questions that I had on Monument Street related to the State, but in the interest of time, I am going to move on to American Recovery and Hawkins Point.

You know the questions that I had at least in terms of what you do, when did you do it with the city? Though I do have a question, same question I asked Mr. Bibko, which is what level of contamination in these monitoring wells would be necessary to trigger additional action from the State?

Mr. EICHBAUM. I think what Mr. Bibko said, which was it was a judgmental question, is correct. We would look at two things.

One is whether there was a change. Our first alarm would be at the point as to whether or not there was a change in the trend that we are finding in the ground water in terms of levels of any contaminant.

The second question would be whether or not we saw any changes that seemed to suggest that, in comparing leachate with ground water analysis, whether there appeared to be things being picked up in, for the first time, ground water that had not been.

I guess deciding whether we would change our course of action would be an individual decision, depending upon what we saw. One of the things we haven't discussed is that at all landfills, we tend to monitor a number of other factors, some of which are parameters that indicate rapid movement off of a site.

Those which are not toxic would be initial indicators to us to go and do further work.

Ms. MIKULSKI. So what you are both saying, then, is that there has to be really an extraordinary demonstrable evidence of an emergency before you would take action.

Mr. EICHBAUM. Well, that is not what I said. I don't kow what you mean by "action." But I did not suggest that it would have to be extraordinary or demonstrable.

I also thought that was a theoretical question. I have already inicated that in terms of Monument Street, in terms of our discussion with the civic association, we are going to bring in a third party to look at what we have done.

I think you certainly have reached a conclusion that there is a disagreement between the two agencies on some points, perhaps.

We are going to bring in a third party to take a look at our judgments.

Second, we are exploring whether there is some way to consider further testing.

Ms. MIKULSKI. What I was expecting was a set of criteria, clear, precise critera, that when X reached Y level, and when A reached B level, that triggered certain actions.

Mr. EICHBAUM. It would be nice if that were the case, but unfortunately, it is not the case.

Ms. MIKULSKI. Why is it not?

Mr. EICHBAUM. Well, we have a community that is concerned. There are a limited number of ways of looking at whether or not the conditions in the environment are such that they ought to be concerned.

One would be, for example, the standard of drinking water. That is a number. We know where that comes from. If we began to approach that, we would become worried if we saw the change in trends, as I suggested.

But again, then, you go to the next question which is the PATWI issue, whether you would institute remedial actions simply because of that shift with respect to a drinking water standard in a monitoring well.

It is not a yes or no answer.

Ms. MIKULSKI. But you would escalate a test, is that correct?

Mr. EICHBAUM. Yes.

Ms. MIKULSKI. You wouldn't wait until you were contaminated.

Mr. EICHBAUM. No, that's right.

Ms. MIKULSKI. We could make a career of the Monument Street landfill. Let's go into American Recovery.

When we originally included American Recovery in the nature of this hearing, this was prior to your issuing of those fines and penalties. I note they were issued 4 days before this hearing. The possible fines are up to $40,000. And that the nature of the violations that have been filed with your appropriate authorities are those that have occurred within the past couple of months, even though the community's been complaining for 5 years.

But I am not going to prejudice, as I said to Mr. Rich, with pursuit of a line of questioning specifically to American Recovery. I know that you are going to do that and I think it does not serve our mutual interest which is appropriate enforcement.

I would, however, upon subsequent completion of those administrative procedures, like to see what happened and what you are going to do about the decisions that are reached.

We don't know yet what those decisions will be. But I do want to ask you about enforcement. What are, at disposal facilities like American Recovery, what are your standard enforcement procedures?

How often do you visit, what do you do when you go there, what do you do for followup? I will use that type of treatment facility.

Mr. EICHBAUM. We are by State requirements required to visit on a monthly basis, I believe, the hazardous facilities. Mr. Nelson may elaborate on some of what I say.

We attempt to do better than that, particularly where we have issues of significant concern in the community or to ourselves.

When we go and conduct the inspection, we have about 6 months ago instituted a standardized inspection process which did not exist prior to that.

It is essentially a complete checkoff form so that inspector is required to look at the entire range of regulatory and permit requirements at that facility.

Violations are noted. Field citations will be issued. And cases are, as I said, as of late last summer, pursuant to agreement between myself and the Attorney General where we find a series of violations, we refer them for criminal prosecution.

Ms. MIKULSKI. By what criteria then, having instituted a standard procedure, obviously what you are seeking is uniformity and continuity which tie in in terms of inspection.

You instituted this when?

Mr. EICHBAUM. About 6 months ago. I will tell you why we instituted it. I will not mention the case because it is under criminal investigation, but we have had cases where inspectors have gone in and cited one or two things; we have five, six and eight other things wrong there.

It took repeated visits and it was a, not a good situation; not only continuity and uniformity, but a complete inspection is the goal also.

Ms. MIKULSKI. By what criteria then in reviewing your own inspection procedures do you then decide to prosecute?

Mr. NELSON. I can attempt to answer that. What you have in the blue book there for your information is what a former Marylander has produced that is in an effort to create a uniform administrative record on a facility as opposed to Assistant Secretary Eichbaum who has said the independent small one or two items. We then transfer this information over the routine inspections we either do monthly on treatment and storage facilities, weekly on land disposal faciliites, but in some cases, depending on the party running the facility, more often than that, transfer the inspection records to a running log of compliance and noncompliance within a facility to show, attempt to show a track record of noncompliance.

This is a whole new system we have just instituted. This is not for imminent hazard. There we would take immediate action, but in areas of noncompliance with the various standards in the various regulations and so forth, it is brought to my attention and we make determinations of what type of action to take what type of civil penalties to assess, what type of compliant and order to issue and in addition whether or not to pursue criminal charges.

It is based on a running track record of the facility.

Ms. MIKULSKI. What is required of you by Federal law in this area, Mr. Nelson?

Mr. NELSON. What is required by us in Federal law?

Ms. MIKULSKI. Yes, on these type facilities.

Mr. NELSON. On the interim authorization requirement, first of all the type of facility American Recovery is, the responsibility we presently share with Federal law, we presently work under a cooperative agreement with EPA on what they call phase 2 authorization parts that deal with treatment and storage.

Obviously we cannot go forward in anything in the area of landfill operations because the standards are not promulgated.

At the present time we are making the inspections, a copy of the cooperative inspection is also in the Blue Book; we are making the inspections to these type facilites ourselves, using our inspection forms and a program that been evaluated by EPA and they believe is compatible.

We are moving forward with phase 2 authorization. If we get that, we will be totally responsible for the inspection, permitting an enforcement. Right now under the cooperative arrangement and because of the program, EPA is allowing us to go forward with the State law and requirements in the area.

Ms. MIKULSKI. Has EPA been of any help to you? Do you think EPA should be of more help to you in this area?

Mr. NELSON. I think EPA, the region has been very helpful to us in the development of the program and understanding the contracts they operate under. I believe any time we have called upon them for assistance, and we have on innumerable occasions used their contractors, their staff and their technical assistance teams to help us in these areas, they have always been willing to do it.

Mr. EICHBAUM. I would just like to add two areas of concern. One, of course, is the funding. States are operating with anywhere from 50 to 70 percent of their program costs being carried by the Federal Government, and there are proposals in the 1983 budget to reduce that by about 16 percent.

That is a serious concern to the States. I would like to emphasize another aspect of that budget issue which I think is very important in the context of today's hearings. That is the funding for public participation. For example, we supported an EPA grant to the Waste Coalition about a year and a half ago to really get them in a position where they had money to devote some full-time effort.

We didn't expect that was going to make them agree with everything we did, and in fact they don't. But did think it would provide for sustained public involvement.

Those moneys are either becoming very minimal or disappearing. Under subchapter (d), there was provision for a statewide advisory council that we would have been able to support. That is, of course, not in existence any more.

We are now in the process of trying to figure out how to pick up those efforts with State resources.

I know you know the full sad story of those various conflicts, but it is a difficult area.

Ms. MIKULSKI. What is the permit status of American Recovery?

Mr. EICHBAUM. There is one issued.

Ms. MIKULSKI. You heard some tough statements made by the Chesapeake Bay Foundation about deletions and so on.

Mr. EICHBAUM. That is right.

Ms. MIKULSKI. Would you like to comment on that?

Mr. EICHBAUM. Two comments on it.

I will try and supplement the record with the details.

We did not provide them to you.

[The information requested was not available to the subcommittee at the time of printing.]

Mr. EICHBAUM. One is that their criticism that prior to the hearings the operations manual was not required to be available as part of the permitting process. I agree with them that that is not satisfactory. That process was changed at that time, but not at the moment of that hearing. But it has been changed, for example, with the MES Hawkins Point permit. That is just intolerable.

Secondly was the concern that certain items had been deleted or were not included either from the recomnendation of the hearing officer or that had been issues that were of concern to Chesapeake Bay Foundation.

I responded to their concerns and I believe that the conditions of concern to the hearing officer were covered in the operation manual or were in fact issues which for good reason I did not believe ought to be in the permit.

I don't have the details of that. I will have to get that correspondence and permit and we will be happy to provide that to the committee congresswoman.

Ms. MIKULSKI. Yes. I think we all should have a lot of respect for the Chesapeake Bay Foundation. They raise some very serious questions and I would be interested.

[The material was not available to the subcommittee at the time of printing.]

Ms. MIKULSKI. Just a few final questions.

What do you see are the future plans for American Recovery? I mean apart—I am referring to the closing and relocation. I am not talking about your enforcement.

Mr. GRIFFIN. Congresswoman, if I could, I know you were asking similar questions of Mr. Rich. I would like to try to amplify those, probably provide the committee with a little more detail.

When we were putting together this overall plan for Hawkins Point—and this was shortly after I think your tour out there last summer—one of the things that occurred to us, and it was principally from a land use point of view— obviously that is debatable—was the idea that it may make more sense in the long term if American Recovery were to do it to suggest they relocate to Hawkins Point.

That is not to suggest that under proper management and enforcement and more capital expenditures that the present site could not be soundly utilized, but it did appear to us from the standpoint of at least residential impact there were a lesser number of homes and from a land use standpoint therefore Hawkins Point may be a better location.

So I approached American Recovery through its lawyer, inquiring as to whether or not they would have an interest in pursuing with us their relocation. They indicated they would.

Following that expression of interest, whether we first met with the community and I think November 22 was the first full community meeting we had, I inquired of them, this is principally an inquiry directed initially at Curtis Bay, whether or not they felt there was any merit in having us pursue that.

I believe it accurate to say they felt that would be the case, though I must point out they would prefer the whole operation be shutdown. So we together, Mr. McKewen, Mr. Rich and American

Recovery representatives, had several meetings late last year talking about the phased relocation of that facility to Hawkins Point.

We talked about an appropriate site. Initially we were looking at an additional piece of port administration property lying immediately in front of the landfill where we are now operating the MES facility.

That was ruled out principally because the port administration did not wish to lease or sell it.

The next site that seemed to be of interest to American Recovery was the site referred to as the city-owned piece of property which is approximately 8 acres. Then we approached the city. We had a couple of lengthy meetings, this time involving city representatives as well, city representatives being the Economic Development Corp., Mr. Trainor, Mr. Wasserman from the mayor's office.

We talked about the whole proposition. At that point American Recovery indicated they wanted to do the phase relocation Mr. Rich described; they indicated they would, depending upon the city decision, either lease or buy the property from the city.

They sought, expressed an interest and started to develop some of the packaging for an industrial revenue bond to be issued through the city that would finance their relocation.

The obvious advantage there to them is, it is a lower interest rate in terms of their land, equipment and building costs. That was the nature of the situation as it stood probably in late November, early December.

There was an issue raised in terms of the relocation that since there are no sanitary sewers or points of discharge on the city property that that might be major encumbrance to their relocation down there. That is something we have been exploring within the MES.

We had thought that perhaps we could construct on a site treatment center of some small dimensions that would provide a basis to treat leachate from the MES facility now being trucked out for treatment and disposal.

Ms. MIKULSKI. So where are we?

Mr. GRIFFIN. As we are going through that and are in hot pursuit of it, we then found out American Recovery, even before we contacted them, was in the process of negotiating the sale of their company to another company, and principally because of that we held the thing in abeyance for a while.

As it turned out, those negotiating with American Recovery decided not to pursue it.

Ms. MIKULSKI. Mr. Griffin, I just need to know the outcome, not the process.

Mr. GRIFFIN. Where we are at this point is that a new company has come into the picture as of the moment. They have been negotiating with American Recovery over the last month. We have been advised we will know within 3 weeks or so whether or not that company has concluded arrangements to purchase American Recovery.

That company has indicated to us, to me, that, having done a full investigation of the site, that their inclination would be, if they are successful in acquiring American Recovery, to keep it there to comply with all outstanding orders.

Certainly if they are not complied with by the time of the possible purchase and then to invest a lot more money in the site to improve it.

Ms. MIKULSKI. So right now we are not sure, so those negotiations are concluded.

To summarize, if this new company coming in buys American Recovery, it is their intention to stay where they are on Birch Street, is that right?

Mr. GRIFFIN. Our understanding with them is that they would like to come to us, State officials, city officials, and the communities involved, and explain upon purchase their plans for the facilities, its current location; or, in the alternative, their views about relocation and what that would involve.

They have indicated to me they are somewhat flexible although it is clear they seem to be leaning toward a preference for staying where they are.

Ms. MIKULSKI. Right now this is an area of uncertainty until all these negotiations are through?

Mr. GRIFFIN. Yes, and it has made it difficult for us in terms of pursuing——

Ms. MIKULSKI. It is not a criticism.

Mr. GRIFFIN. No, I know that. To know which company we are ultimately going to be dealing with; that has been a problem.

Ms. MIKULSKI. Whether those negotiations are concluded and subsequent, presuming they do purchase, if they in fact do, we would like to be included, since we are included in everything else anyway.

So we will have that aside.

Mr. Nelson, a final question to you before I go to EPA on this.

Ms. Sipes wrote me a letter on July 25 outlining their concerns about American Recovery, the fires, the explosions, the flooding, all of these issues that have been going on ostensibly for some time.

In her letter to me she says this:

> Ron Nelson told me we have to prove there are violations of permits. We are not chemists, but I can read a noncompliance report when it states they exceeded their limits. What more proof do you need? If we have to be the watchdogs in private, what are they paying enforcement for?

Did you tell Ms. Sipes that the community had to prove that there were violations?

Mr. NELSON. No.

Ms. MIKULSKI. What did you tell her?

Mr. NELSON. Let me tell you. I can recall the discussion. What we were talking about at the time was, Ms. Sipes, rightfully so, wanted more rapid enforcement on American Recovery and I don't argue with her on that point. She was asking why we did not take these immediate enforcement actions.

Saying why did you not? My response to her was that you must be able to prove a series of events, I believe, because that is the new enforcement strategy that I have tried to develop, that can accumulate in a sound enforcement, that will stand up in court in litigation.

The "you" I was referring to was us, not her. When I said you must, I meant you, the one who is going to do the enforcement. I did not indicate that I expected them to do it.

I have always asked Ms. Sipes, however, and other members of that community, and there was some difficulty in them getting to the right people, like Mr. Smith indicated he had called the Coast Guard at one point instead of us and so forth, that we try to establish communications so we can respond.

That is a misunderstanding that we had. I thought that was cleared up. I did not ever intend for the community to do the enforcement, or be the chemists.

Ms. MIKULSKI. Do they know that now?

Mr. NELSON. I certainly hope so.

Ms. MIKULSKI. Why don't you convey that to them in more specific language?

Mr. NELSON. I certainly will.

Ms. MIKULSKI. Even I think this morning you could see they had the questions.

Mr. NELSON. Yes.

Ms. MIKULSKI. They were also talking about more of a one-stop shop in terms of citizens' concerns. Those are internal management problems related to the State. It is not my job to tell you how to manage your affairs, but I just wanted to bring to your attention once more before the day ended that citizens groups across the board have said when they go, this is here, that is there, somebody else is here. There is not a central person or desk that says if you come in and want to know, we will assemble that for you.

Is that the direction you are moving in?

Mr. EICHBAUM. That is a problem. We want to solve it. If they would come in during this past week the files would have been in my office and they wouldn't have been able to find them.

The week before they might have been in the attorney's office. I mean the files move, depending on who is dealing with the problem and whether it is air and water.

We happen to have a consultant coming in on Monday to work with us on that problem, so we do want to try from a community access perspective to improve.

Ms. MIKULSKI. Their complaint is—nothing has moved from 1977, whether it is the files or your agency, to the EPA. The State has been attempting to carry out their enforcement.

One can talk about how best that has happened. However, my question to EPA is, how do you enforce enforcement?

Mr. BIBKO. Congresswoman, I think you have hit on the one area that will bring a little disharmony into the State/EPA picture in this proceeding.

As you know, we have had a new emphasis, or at least we are purported to have a new emphasis in enforcement in the agencies.

The RA is now, in general, responsible for initiating all enforcement actions in our region. I think we have had problems in the past in auditing State performance. I think States have been moving ahead on certain cases at the right pace, other cases not so right perhaps; not as quick as they might with a little bit of prodding.

This is my personal opinion because I have only now taken over this position. Up to this time, with regard to American Recovery and a lot of other problems, perhaps, that have occurred in the past and enforcement being a little too slow, my division directors

and the lawyers, our enforcement division, as it used to be called back in region 3, was responsible for this.

Under our new procedures, the first thing I did was go out and commission an oversight study if you would have a five-State region to find out how, No. 1, States identify violations.

Two, how they report them to us.

Three, what criteria my enforcement, the old enforcement lawyers and technical people used to apply to determine which cases should be brought and haven't been brought.

Four, what kind of reporting mechanisms are in place to audit State progress once they have taken responsibility for a case delegated to them under a program and similarly make sure our own people have followed through.

So I think there have been some problems in the past because what our oversight study has shown is that, I am not saying there is anything wrong with the way it is done, the Federal/State representative in any State, but what it has shown is tremendous variability.

For example, one division director, Steve Wassersug, who is now going to be in charge of recommending to me enforcement actions in Maryland, all right, and he will have different data coming from Bill Eichbaum perhaps than he would from some of Bill's counterparts in another State.

We do have problems, Congresswoman.

I think just the one we brought up here, the American Recovery one, is an example of the kind of thing we wouldn't collar the State on, but we have a mechanism for routinely making sure that this sort of thing might not occur.

That, if a case should have moved at a certain speed, either we can tell Congress and I can tell the Administrator why it didn't, or it has to be at that stage.

So you know I do think this is a problem.

I think this is all new. We recognize this is one of the problems. I think this is why there has been the re-emphasis on the change of enforcement at EPA.

Ms. MIKULSKI. Mr. Bibko, I know you took your office September 1, 1981. I am not asking you to take responsibility for anything prior to that. However, EPA has been in business now for a decade. I believe it was established under the good days of the Nixon administration. It was a major breakthrough in environmental protection.

Do you mean to tell me that in the 10 years that EPA has been in business, whether it was Nixon, Ford, Jimmy Carter, that there was no standardized regional procedures in this?

Mr. BIBKO. No, Congresswoman, not exactly.

I will be happy to provide you with a report when it comes out that describes this in detail. But in general what I am saying is that there is a lot of variability among the States.

In other words, we have what we call a CDS data system that is generally used in all States. There are mechanisms to do it.

I personally am not sure now, and I will let Steve Wassersug, perhaps, address it.

Whether or not I am comfortable knowing that I will know when the State drops the ball on an enforcement action based on the system.

Ms. MIKULSKI. That is my question.

Eichbaum and Nelson say they have developed a form in the past 6 months that provides uniformity and continuity of enforcement. That is great.

You, in the now 8 months of holding your position, have commissioned this study. Do you mean to tell me that the Federal Government did not, for all that it mandates and all the paperwork it requires of so many people in so many things, did not have standard reporting procedures, doesn't tell the State how to collect the data, but have standard reporting procedures from the State to the Federal Government?

Mr. BIBKO. No, Congresswoman. Just before I turn it over to Steve, who was director of enforcement for many years. What I am saying as clearly as I can is that the methods that were in place were not; One, as uniform as they should be, two, as efficient as they should be, and three, not aimed at the promoting of environmental gain necessarily.

I know this is administration——

Ms. MIKULSKI. I am just talking about basic management and administration of an organization. So what you are saying is, prior to your being in the region, this study you instituted, or are other regions instituting——

Mr. BIBKO. It is being done on a national basis. We kind of jumped the gun ahead of time before national because I was personally concerned about it, being an attorney.

Actually it came from trying to understand the enforcement system and then learning that Maryland would get an extension, the time between which I would act would be longer than I would like it to be.

In some States you would get it quickly in some programs. In other States it would vary.

Ms. MIKULSKI. You see my question to you that led us into this and I am going to bring this to a close now, my question to you was, how do you enforce enforcement?

You said it has been uneven, and have commissioned this study. So my question back to you is, prior to this, when Ms. Sipes said to me in the neighborhood, these violations have been going on since 1977, 1978, and another community group says this has been going on since 1979 or 1952, or whatever, there has been then neither at State—I am not just singling out Maryland, systematic waste of gathering data, keeping records which they convey to you, you meaning EPA, making sure we get our pronouns of "you" understood, to say hey, Maryland's great or Maryland's not great.

New Jersey's terrific, or whatever.

Also, where you can go in and pull samples. I presume you are not going to read every record. You are going to use samplings. Am I right?

Mr. BIBKO. In the anticipation of a complete record, can I let Steve Wassersug address this, who is most knowledgeable on that point?

Ms. MIKULSKI. You have been here 10 years, haven't you?

Mr. WASSERSUG. That is right, with EPA. That is exactly what we are doing and will be done. I think the difference is that we have the older line program such as the air program, we have some very good real time data and very good systems in which we can analyze very quickly what violations are, what actions the States are taking, whether or not we will test it against the remedy being sought.

Do we think it is effective? That is one test.

Do we think the timeliness of their action is effective or not?

I think in the hazardous waste program we are in a difficult and diffrent situation. The data base is only being gathered at this time. The State does now, through the agreements and interim authorization program that we have with the State, they do formally submit copies of all their inspections, all their violations and actions in effect that they bring.

In my review of this I think one of the problems we see is that these reports are sent to us within 60 days after the quarter. Now the problem that that may bring up is, we might find violations that have occurred several months before it has been made known to the EPA in the regional office as far as whether the violation occurred and perhaps what action and how timely the action was by the State.

So what is under review is to see whether or not we can get more real time information as quickly as possible, and therefore we can monitor all the States to insure that the action they are bringing is appropriate, or if it is not appropriate and is not timely, then EPA will do that in each individual case.

This is generally what is done much more so in the air program right now than has been done in the hazardous waste program.

Ms. MIKULSKI. Well, we look forward to seeing this oversight report. It is just frustrating to hear that. That is not a criticism. It is just frustrating to hear that it has taken 10 years of EPA existence now to try to get uniformity and continuity, to then make sure that we are doing that, and to identify patterns.

It is not the single violation of a particular landfill or facility that is the problem, though it could be if it were dangerous.

But really, I think anyone who enforces the law looks not for the single act; you might go in and say what did you do here and get them to clean it up, but a pattern or persistent pattern. That is what you really look for. You can only look for that if you have a standard way of analyzing it.

Even social workers know how to keep records like that. I have a degree in social work too. Well, we look forward to that.

It is now 6:20 and I think we are getting tired and I appreciate your stamina. I would like to go on to the Hawkins Point issue. I understand you are not participating, Mr. Eichbaum, but we could be calling upon other members of the department of health team.

I think the original questions that I had were about the operations of the site, what types of waste it would have and what it will accept.

I think Mr. McKewen, you answered those questions. We also had questions related to the general hydrogeological integrity of the site. I think you went into that.

I just want to go back to that briefly. It seems to be a watery site. I don't mean that as a pun. Since that, for example, others have mentioned today you can drill one place and you can drill 65 feet and it is dry.

Mr. MCKEWEN. Correct.

Ms. MIKULSKI. You can just go a few feet from that and all of a sudden you have other water.

Mr. MCKEWEN. Let me go into that a bit.

There is something that should be clarified.

The area of Hawkins Point is quite variable, so I will restrict what I am speaking to solely the site on which we will be operating because what I am saying about the port authority property is not necessarily—in fact, it is not true of other areas of Hawkins Point.

Basically we are dealing with a variable deposit of clay and silt that extends from the surface down to the Patapsco aquifer. That aquifer today I think is about 150 feet.

Mr. FOSTER. 100 to 130 feet below.

Mr. MCKEWEN. We would wish that was an accurate description, but it is not because in that upper formation, in addition to the clay and deposits of silt, there are sand lenses. If you punch a hole in that area and do not hit one of the sand lenses, then you will hit a perfectly dry hole.

I think that was described earlier in connection with one of the monitoring holes. You can move 10 feet and hit a sand lense and find water at a depth of several feet. If you get below the sand lense, then you may go another 100 feet and be in tight clay.

The port authority property where we have put in I guess a couple dozen boreholes to try to get as good a definition as we could of the geology, part of our finding, and I guess the dominant part, was that we do indeed have an extensive deposit of very tight clay.

We also have in part of that site some sand lenses. So, as we construct the cells, No. 1, we will not go very deep. The bulk of the landfill is not going to be dug into the existing ground. It will be built up above existing ground level.

Ms. MIKULSKI. How high up are you going to go?

Mr. FOSTER. Above existing ground about 75 feet at one point.

Ms. MIKULSKI. Seventy-five feet?

Mr. FOSTER. Above existing ground level.

Ms. MIKULSKI. It is hard for me to think in terms of feet. How many stories of a building?

Mr. FOSTER. Seven and a half stories above existing ground level.

Ms. MIKULSKI. So your landfill will be at certain points seven and a half stories high?

Mr. FOSTER. At one point, and it slopes down sort of like a pyramid.

Ms. MIKULSKI. You are Mr. Foster?

Mr. FOSTER. That is correct.

Ms. MIKULSKI. Is it Dave?

Mr. FOSTER. Yes, ma'am.

Ms. MIKULSKI. I have here a letter dated April 29. I am going to hand it to you so you don't have to remember all of this, sent to Mr. Fred Sachs at the Department of Health. Let me give you a copy of this letter. Why don't you sit there with Mr. McKewen?

The letter that is addressed to Fred Sachs refers to site 2, permit No. A-145. Is this the new proposed site?

Mr. FOSTER. No, ma'am.

Ms. MIKULSKI. Is this the existing Maryland Port Authority site?

Mr. FOSTER. Ma'am, this is the existing chrome or waste disposal site we are planning on expanding vertically with the new permit. This is the old permit here now.

Ms. MIKULSKI. I am trying to make sure I know you have got site 1, site 2. So we are talking here about the old MPA chrome site, is that correct? Put your map up.

Mr. FOSTER. OK.

Mr. MCKEWEN. There are two old MPA sites.

Ms. MIKULSKI. Getting older by the minute.

Here you talk about site 2.

Mr. FOSTER. Right here.

Ms. MIKULSKI. This is what is currently being used to accept waste, this site, currently being used to accept the chrome from Allied; is that correct?

Mr. FOSTER. Correct.

Ms. MIKULSKI. Then this is the site that you intend to expand?

Mr. FOSTER. Yes, we plan to expand their site vertically and also build a general hazardous waste cell right here. There is general waste. This is chrome waste.

Ms. MIKULSKI. General waste, general hazardous waste?

Mr. FOSTER. Yes.

Ms. MIKULSKI. Right in this cell here. Of course, this is the Patapsco River?

Mr. FOSTER. Yes, Thom's Cove, Patapsco River, Key Bridge.

Ms. MIKULSKI. Chesapeake Bay.

Mr. FOSTER. Correct.

Ms. MIKULSKI. Here you talk about your compact test. You say there still exist two seeps in this area and you intend to put additional clay in.

Mr. FOSTER. Yes. That is in this cell we are presently operating.

Ms. MIKULSKI. That is seeping?

Mr. FOSTER. We had some water seeping into the cell.

Ms. MIKULSKI. From where?

Mr. FOSTER. From the ground, below the ground.

Ms. MIKULSKI. From in here or do you know? Can you tell by the quality of the water?

Mr. FOSTER. The bottom of this cell is at least 8 feet above sea level. We have raised it now to 10, even 12 feet above sea level.

Ms. MIKULSKI. You then say—go ahead.

Mr. FOSTER. But the water coming in here is coming from the, up from beneath the site, we suspect.

Ms. MIKULSKI. Then is it reasonable to believe that there will be always water coming up here?

Mr. FOSTER. There is also a hydrostatic head up toward the site. That means the Patapsco aquifer, which is about 100 feet below us, is under pressure and water is tending to come up toward the surface.

This is one of the safety features of the site. Our cell, the bottom of the cell, a 3 foot minimum clay liner, if it should leak or if there

should be a hole in it, the water would tend to come into the cell rather than our leachate leaving the cell.

We still don't want the water to come into the cell because that will create leachate and cost considerable money to treat.

Mr. McKEWEN. One reason we have that kind of problem is that those older cells are deeper than we put them in now. Secondly, it did not have leachate collection as the new cells will. In fact, we are going to retrofit the old cells with leachate collection to prevent a repetition of that.

Ms. MIKULSKI. You then state in your letter, MES will not landfill hazardous waste in this area in question without specific approval from your office. What did you mean when you said that?

Mr. FOSTER. I reiterated the letter from Mr. Sachs. He directed us not to. When we operate this site, a cell, waste begins at the upper end like so. From here up, let's say for example, we have waste disposed, any given day, we have a berm placed here temporarily to contain runoff.

As the site is filled, as the cell is filled, we continue to move this berm every month or so on down. So this area, although this berm which says nothing but rainwater, clean rainwater, is the area that was seeping, and we were taking measures to seal those seeps, once we have sealed them in; we have since this letter was written, and we have gotten permission from the health department now, to move the berm down another 42 feet and continue filling in this area behind the berm. And also, we have gotten permission to move 75 feet about 3 days ago.

Mr. FORTUNA This is a vertical expansion, you called it. Are you building on top of the other site or is this actually a lateral extension?

Mr. FOSTER. Both.

Mr. FORTUNA. You are going up in elevation.

Mr. McKEWEN. Also out horizontally, yes, sir.

Mr. FORTUNA. With regard to seepage, how certain are you that you can contain it or prevent it in the future?

Mr. FOSTER. Like I said, if we did get seeps in the future, the water would be coming in. We are putting a leachate pipe in.

Mr. FORTUNA. But there is a reasonable possibility seeps will occur in the future?

Mr. FOSTER. I say there is a possibility.

Mr. McKEWEN. We felt we have designed this so we assume they would occur. We would hope they would not, but we have to assume they will.

Ms. MIKULSKI. All right. Just to clarify for the record, this landfill is being expanded for the purpose of increasing the hazardous waste disposal capacity; is that correct?

Mr. McKEWEN. That's correct.

Ms. MIKULSKI. Who will be the owner of the site?

Mr. McKEWEN. The owner will be the State of Maryland and probably in the form of a long term lease from the port administration to MES.

Ms. MIKULSKI. So that the State of Maryland will be both owner of the site and regulate its operations?

Mr. McKEWEN. That's correct.

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Ms. MIKULSKI. Was this expansion brought before the State's hazardous siting board?

Mr. MCKEWEN. It was not.

Ms. MIKULSKI. Why not?

Mr. MCKEWEN. The reason it was not was that, or is that the site is on State property in Baltimore City. The city has indicated that they, although this has not occurred yet, indications are that the city will not object to the site being used. And the siting board acts in a situation where local jurisdiction is opposed to and does not, is actively fighting the siting of a facility.

Mr. GRIFFIN. Can I supplement that?

Ms. MIKULSKI. I think you better answer it.

Mr. GRIFFIN. The siting board is a surrogate to local government in a specific sense. That is that it acts in lieu of local government to grant site approval through zoning. What has happened is as is evident here recently at Solley Road, the local government originally zoned that as a permitted use. That local site approval, now in the alternative State siting board approval, it is required for at least the State health department to issue its permits.

So you have either—right now in the State, one of two things can happen to give site approval. Local government as a function of zoning, can zone the land you want to use for a facility as a permitted use or by special exception. Or, failing that, the land can be granted in fact zoning through the State by the State siting board.

Ms. MIKULSKI. Is this zoned appropriately by the city of Baltimore?

Mr. GRIFFIN. Yes, their zoning law exempts from local zoning and therefore grants zoning to all land owned by city, State, and Federal Government agencies. So the point I would wish to make in clarification of Mr. McKewen's remarks is that this site has site approval. The reason for going before the siting board is only one reason. That is to get site approval if it is not locally provided, which it is in this case.

That is the specific reason. Of course, the other benefits we saw in the Siting Act with the siting board were to try to aggregate consideration to—aggregate expertise in terms of geological and other consideration that aren't often taken into account in local zoning.

Mr. MCKEWEN. Let me add one point to make sure the point is clear. The siting board was not created to pass on all hazardous waste facilities; only those that could not proceed because of local veto.

Ms. MIKULSKI. But there is no opportunity, then, for public participation and local veto other than through local zoning; is that correct?

Mr. MCKEWEN. Local zoning and through the health department permit process which remains unimpeded.

Ms. MIKULSKI. The city of Baltimore, in its zoning laws, has exempted itself from passing individual statutes where it wants to establish landfills?

Mr. MCKEWEN. I think John is referring to the fact that this is State land. However, the privately owned land immediately adjacent and completely surrounding the site is zoned for heavy industrial use.

Ms. MIKULSKI. I remember having heavy industrial use. You could put anything in there except the nuclear reactor. Then we wondered if that could happen.

Mr. MCKEWEN. We have no intention of trying.

Ms. MIKULSKI. But you have not turned to your own siting board for the reasons you have stated. Let's move on because the hour is getting late.

The Hawkins Point facility is presently operating under an interim status authority of RCRA; is that correct?

Mr. MCKEWEN. That's correct.

Ms. MIKULSKI. It is the interim status facilities at Hawkins Point that are slated for expansion?

Mr. MCKEWEN. Yes.

Ms. MIKULSKI. Under what authority is the expansion of the interim status facilities at Hawkins Point occurring?

Mr. MCKEWEN. You mean State or Federal?

Ms. MIKULSKI. What provision of the regulations?

Mr. MCKEWEN. Let me turn——

Ms. MIKULSKI. By the way, EPA can come in. I am sure you have been watching Hawkins Point closely.

Mr. BIBKO. Let me just tell you what Steve has already told me during our discussions on this point in the office and let Steve elaborate especially if I have made a mistake, Steve.

It is my understanding we could not approve the expansion on the existing regulations until we do have standards promulgated. Once that has been done, the question of the expansion will be one of need, No. 1, as the regulations in 40 CFR 122 set out. One of need of capacity in the State, and, No. 2, that the amount of expansion cannot exceed I think it is 50 percent of the overall capital costs of an entirely new facility.

Otherwise, it wouldn't be an expansion, it would be a reconstruction under the law. I think those are the applicable criteria.

Steve, can you add anything?

Mr. WASSERSUG. This would be handled basically under interim status, which basically is what the landfill is under at the current time. It would not be a permit, so to speak. It would be an administrative action under that particular regulation, 122.23.

Ms. MIKULSKI. You just said you couldn't approve it; is that correct?

Mr. BIBKO. It was my understanding I could not permit the facility until I had standards to apply, Congresswoman. That was my understanding.

Ms. MIKULSKI. That is the standards of RCRA that have not been developed and that we don't anticipate their completion for 8 or 10 years; is that correct?

Mr. BIBKO. No, Congresswoman, I think you are referring to the part B call-ins. I don't know what you are referring to but I know 8 to 10 years is a number mentioned by a lot of people as the time it would take us to call in all the part B applications, now interims. Those that have filed part A's.

As far as the design standards applicable to facilities, I believe, well, I don't think it is going to be 8 to 10 years.

Mr. WASSERSUG. We anticipate that the standards in essence for the landfills will be out shortly, within a few weeks or so. At that

point, it will be a several month process before they become effective at which time for landfills we could then call in the part B of an application.

Following that time, there is another 6-month period by which the applicant would then submit the application to us and following that, the agency would then issue the appropriate permit. At the current time, what is conferred on treatment and storage and disposal areas, is what is known as interim status.

Mr. FORTUNA. Clarifying the record, you and Mr. Bibko are saying the applicable provision is 122.23 C, of the RCRA regulations and that the EPA does not have the authority to grant this interim expansion, correct?

Mr. WASSERSUG. No. To issue you a permit. But we can grant expansion of the site under interim status under 122.23.

Mr. FORTUNA. You can. So the final standards are really somewhat irrelevant to the current discussion, right?

Mr. BIBKO. No, Mr. Fortuna. Steve, correct me if I am wrong. The important point is that if we are going ahead and allow expansion under 122, and standards come out, this is an interim facility, don't forget. Standards come out that the facility can't meet as redesigned, obviously, they would be in serious trouble of continuing to dispose of waste.

So in essence we can't issue a permit until the standards are there to apply to it. The way I understand it, though, we could go ahead and say, expand it, we can't give you a permit but you can expand it if you meet the other tests. It would behoove them to consider seriously the design characteristics and how they will stack up with our standards if they continued to be in business. Given the capital they will put into this, I would assume they would.

Mr. FORTUNA. Let's clarify which box this facility falls into. Let's assume the final 264 standards don't come out for some time and 122.23 C standards are the ones that apply to this particular application. You are saying you have the authority to allow that facility to expand under certain conditions; right?

Mr. WASSERSUG. That's correct.

Mr. FORTUNA. Then in the alternative, if the 264 standards come out in the near future and become final, then those would be the standards by which you would call in the part B permit; correct?

Mr. WASSERSUG. That's correct.

Mr. FORTUNA. Which avenue is being taken here?

Mr. WASSERSUG. At the present time the only avenue that is appropriate to be taken at this time is under interim status.

Mr. FORTUNA. 122.23 C.

Mr. WASSERSUG. That's correct.

Mr. FORTUNA. That is fine. Let us confine our discussion to that for the time being.

Ms. MIKULSKI. We thought you were moving in another direction here. Let me read to you then from 122.23 C regarding changes of facilities under interim status, and I will tell you where we are going because I am going to read you the regulation. Then I want to know whether you are saying the expansion of Hawkins Point to a megadump is justified on these grounds.

Increases in the design capacity of processes may be made if the owner or operator submits a revised application along with the justification explaining the need for changes and the Regional Director approves the changes because of a lack of available treatment storage and disposal capacity at other hazardous waste management facilties. Is that why you are going to do it? What is your justification?

Mr. WASSERSUG. The point is, that is the test. At this point we are receiving data and through the application from the State, and simply are evaluating it at this point. We have not made a determination in the office. That is one of the tests that it is being reviewed under.

Ms. MIKULSKI. What are the other tests?

Mr. WASSERSUG. The other test is in 5: In no event shall changes be made to a hazardous waste management facility during interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility.

Ms. MIKULSKI. Do you have a copy of the total cost, including relocation?

Mr. WASSERSUG. I recall signing some correspondence and additional information I believe is being prepared now that will be transmitted to EPA shortly. We do not have, as I understand it, all the information in our office at this time.

Mr. FOSTER. The information on costs were transmitted this last week.

Ms. MIKULSKI. Do you have the total cost?

Mr. FOSTER. New—$2,261,000 sticks in my mind. For remedial action and expansion.

Ms. MIKULSKI. What about the cost of relocating the houses; is that included?

Mr. WASSERSUG. To the best of my knowledge at this time, I don't believe so.

Ms. MIKULSKI. Would you ask the State of Maryland as part of your permit review what is the total cost to the State of Maryland to bring this proposed project on line?

Mr. BIBKO. Congresswoman, I am not sure we would. We have tried to answer that question fairly. We are discussing it with legal counsel now trying to figure out what they mean when they say the cost. It was my impression, since there is similar language in other statutes, maybe Mr. Fortuna can comment. What the law is trying to prevent is somebody from rebuilding a facility totally under guise of an expansion.

Ms. MIKULSKI. Mr. Bibko, I want to bring to your attention what the State of Maryland is proposing is. Expansion of this site, which means site preparation, doing all those things Mr. McKewen and Mr. Foster outlined. It is talking about going in and relocating 22 families at today's housing costs and interest rates, at least if they are going to do it fairly.

Then there is the possibility that they will also relocate a major—possible, major—possibly relocate a major treatment facility called American Recovery. And you don't pick up American Recovery and just move it without it costing a bundle of bucks. Clo-

sure, all of that. Let us just say the American Recovery move occurs, in fact, you are literally taking it and rebulding it someplace else. whether you do it a phase at a time or totally.

My question to you is, are you taking those total costs into consideration?

Mr. BIBKO. Congresswoman, again, with all due respect, please pardon me, I am not saying you are wrong and that these will not ultimately be taken into account. I am saying as you have just heard, we just got the cost information. We are right now trying to get analysis of congressional intent in that section. And whether or not we are authorized to take those factors into consideration.

It may well be we will be doing just that and we certainly will be requesting the information.

Ms. MIKULSKI. So the answer is you don't know and you are getting EPA's legal counsel to advise you of that?

Mr. BIBKO. My regional counsel, that's correct.

Steve, can you add anything to that?

Mr. WASSERSUG. No, I think it is a fair issue that is brought up for review. I don't know.

Ms. MIKULSKI. We don't need additional comment.

Mr. BIBKO. I just wanted to make sure the record is clear for you.

Ms. MIKULSKI. Good. When you get that legal opinion, I would like to see it. [See letter of June 20, 1982, p. 156.]

Mr. BIBKO. Yes.

Ms. MIKULSKI. Obviously, we are breaking new ground here.

Mr. MCKEWEN. Could we respond to that at some appropriate point?

Ms. MIKULSKI. Let me follow this with EPA and their criteria and their implementing there because the intent of the Congress is that under interim status somebody could not come in and rebuild something someplace else and just take this little thing with them. Under the 50-percent expansion criteria, what is the definition of 50-percent expansion? Is it accurate or do you also count in your vertical expansion as well? Do you count volume, bulk?

Mr. WASSERSUG. Simply the capital cost of a facility, it is not acreage.

Ms. MIKULSKI. Yet you don't know, you are only going to count the capital cost of the facility and not what all it takes; is that right?

Mr. WASSERSUG. That's correct.

Ms. MIKULSKI. Now, the State and EPA is kind of interpreting these regulations as they are going along, getting legal opinions. Is this right?

Mr. BIBKO. This is what we do routinely in areas such as this, where the decision is offered me from the division director, the first thing I will ask is whether it is a case of first impression with me; whether or not we have a legal basis or precedent. If not then, I want a legal opinion from regional counsel that I am properly considering all the factors before I make a decision. That is kind of where we are right now; yes.

Ms. MIKULSKI. There are about 10,000 other interim status facilities in the United States like this. Do you think they have qualified for interim status expansion? How many?

Mr. BIBKO. I have no information on any that have qualified, Congresswoman.

Ms. MIKULSKI. The answer, Mr. Bibko, is that no other hazardous facility in the United States has been able to meet the conditions of the regulations that I pointed out. This comes from EPA headquarters itself.

The reason for this is that there are other available disposal sites or techniques. The incineration industry is on its ear because of underused capacity. Are you familiar with the proposed settlement in the NRDC versus EPA case between industry petitioners and EPA?

Mr. BIBKO. I have heard of the case, certainly. It has been cited for many things. What was the specific proposal you are referring to——

Ms. MIKULSKI. Do you know why industry petitioners brought the case?

Mr. BIBKO. NRDC has brought some cases, I am not trying to be evasive. I don't understand which one.

Ms. MIKULSKI. They brought the case because all of them interpreted regulations as de facto prohibition on interim status expansion. They are petitioning for a revision to these regulations so as to allow expansion of the type now scheduled to occur at Hawkins Point. So how is it the State of Maryland and EPA are operating differently than everybody else.

Mr. BIBKO. They are petitioning. Again, with all due respect, I don't know the validity of their claims, where it stands in court, if the court has finally ruled on it. That section of the law has been interpreted. That is a kind of precedent I am hoping to get from regional counsel.

Other than that, I can tell you that factors such as you mentioned, susceptibility to incineration or thermal oxidation of wastes I would hope would be considered by division directors whether it is organic, inorganic, in coming up with a determination on need which as I understand is the first criteria. There has to be pressing need for the expansion.

Again, that decision hasn't been made. What we are hearing right now is certainly going to emphasize the importance of it to us.

Ms. MIKULSKI. Mr. Bibko, we are at precedent stages in a variety of our activities in this area. I would encourage you, in fact formally request that your regional counsel, who I have no doubt in his or her competency in giving you a legal opinion, consult with the chief counsel of EPA who is obviously handling, processing these other cases so at least here there is uniformity and continuity in EPA legal advice so that you know what you are doing and so that the State operating as it is, submitting whatever appropriation is proper, so we know what rules we are playing by and so some of these things are not reversed later on because we don't want that. At the same time we want to be sure what these legal parameters are.

Mr. BIBKO. I couldn't agree more. My regional counsel reports that is standard procedure. I will certainly get you a copy of this as soon as I have it.

[The following information was received for the record:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JU 20 1982

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Honorable Barbara A. Mikulski
House of Representatives
Washington, D.C. 20515

Dear Ms. Mikulski:

Administrator Anne Gorsuch appreciates your June 22 letter requesting clarification of the requirements under the Resource Conservation and Recovery Act (RCRA) for expansion of existing hazardous waste management facilities. The Administrator has asked me to reply.

Specifically, you asked for an interpretation of the provisions of 40 CFR §122.23(c)(5). That section provides that "In no event shall changes be made to an HWM facility during interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes exceeds fifty percent of the capital cost of a comparable entirely new HWM facility" (emphasis added).

Your questions and our responses are:

1. Question: If a State-owned site is expanding, would the cost computations for a comparable new facility assume no land-purchase cost since a comparable new facility would also presumably be built on a State-owned site?

   Response: The cost computations for a comparable entirely new HWM facility would include the fair market value of the land necessary for such a facility, whether or not the expanding site is State-owned. Land has value whether or not it is State-owned. Therefore, EPA would use the fair market value of necessary land in its cost computations.

2. Question: If a site is expanded, would construction of off-site access to a freeway concurrent with the expansion be included in the capital costs of expansion?

   Response: No. Off-site access to a freeway is not part of the hazardous waste management (HWM) facility, as defined in 40 CFR §122.3 of the regulations. A HWM facility means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of "hazardous waste . . ." (emphasis added). Off-site access roads would not be included, therefore, in the capital cost of the changes to the facility.

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3. Question: If a site is expanded more than once, would the cumulative costs of expansions since November 19, 1981, be used for a determination of what constitutes a reconstruction under 40 CFR §122.23(c)(5)?

   Response: Yes. The cumulative costs of capital investments in the changes since November 19, 1981, are used to determine what constitutes a reconstruction. Any other interpretation would allow facilities to spread out the costs of expansion over several different changes at different times, defeating the purpose of this regulation.

4. Question: If a site is to be considered for expansion, what criteria will be applied by EPA in determining the relationship of the capital costs of a comparable facility on the following matters: acquisition of land, acquisition of construction materials, transportation of materials and structuring of the site, construction of groundwater monitoring and control features, and construction of access to the site?

   Response: The capital cost of a "comparable entirely new HWM facility" is the cost in today's dollars of building a hypothetical facility comparable to the facility which qualified for interim status in both area and capacity, but using current state-of-the-art technology.

   Acquisition of land: The fair market value of necessary land would be included in the cost of a comparable entirely new facility.

   Acquisition of construction materials: The fair market value would be included.

   Transportation of materials: These costs would be included in the cost of acquiring construction materials.

   Structuring of the site: The construction costs would be included.

   Construction of groundwater monitoring and control features: The costs of such features would be included.

   Construction of access to the site: These costs would not be included in the cost of a comparable facility, for the reasons stated in the Response to Question 2.

5. Question: If a site is to be considered for expansion, what criteria will be applied by EPA in determining the relationship of the capital costs of a comparable facility in the relocation of adjacent communities including selling of homes and adjacent properties; moving expenses for both residents and community institutions; and repurchase of new homes?

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Response: The calculation of costs for a comparable, entirely new facility would not include the cost of relocating the residents of adjacent communities. As explained before, "facility" means the land, etc., used for treating, storing, or disposing of hazardous waste. Adjacent communities are not part of an HWM facility.

6. Question: Under the provisions of 40 CFR §122.23(c)(5), what alternatives must be considered for purposes of establishing that no alternatives to the proposed expansion exist? Must any of the following be considered: incineration; shipment to other facilities in the region or the nation; recycling programs to promote at-source recovery; some combination of these or other alternatives?

Response: EPA may approve requests for increasing the design capacity of existing facilities because of a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities. This determination is made by the EPA Regions on a case-by-case basis. The Agency would consider all of the above-mentioned factors in evaluating the technical feasibility and cost constraints of the alternatives available within the time that the capacity is needed. EPA would explore issues such as: How far are similar volumes of waste shipped? Would the additional cost of shipment to an alternative facility be so great that it would not be practical or reasonable to do so? Does the waste require specially designed vehicles, e.g., is the waste extremely flammable or dangerous? Would at-source recovery be feasible and practical within the time that the additional capacity is needed? Is incineration or alternate treatment at other facilities technically or economically feasible?

You have also requested information on any applications for the expansion of existing hazardous waste sites which are pending, or have been approved or rejected by EPA, under the provisions of 40 CFR §122.23(c). As mentioned earlier, these decisions are made at the Regional level. We are collecting this information from our Regional Offices and will forward the results to you.

In addition, you have requested information on any lawsuits brought under the provisions of 122.23(c). There have been no lawsuits challenging the use of §122.23(c) in specific circumstances. There has been a generic challenge to the provisions of §122.23(c). In NRDC v. EPA, No. 80-1607 and consolidated cases (D.C. Cir., filed June 2, 1980), several industry associations and other groups challenged this provision as too restrictive. EPA entered into a settlement agreement in which the Agency promised to propose some changes to §122.23. EPA recently reopened settlement discussions on §122.23(c) with the petitioners and, to date, has not issued a proposal.

We appreciate your interest in these matters, and I hope this information will be helpful to you.

Sincerely yours,

Rita M. Lavelle
Assistant Administrator

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Mr. FORTUNA. For purposes of clarifying the record, the case referred to is *NRDC* v. *EPA*. It is not that NRDC brought the case but the reference was to industry petitioners in the case and a proposed settlement agreement between industry petitioners in the case and the agency. Some of the industry petitioners are Shell, Mobil, Dow Chemical, Chemical Manufacturers Association.

The context of this settlement agreement is that the agency, would agree to modify section 122.23C to allow expansions or modify existing regulations expansions to occur based upon the individual merits of the facility. The basic question is here, how is it that all of these major firms interpret these regulations as not allowing them to expand, because other capacity is available and the state and EPA seem to be going off on a different track.

Is there no question in your mind that you will be able to justify this type of expansion of an interim status facility despite the fact that all these industry petitioners in this case don't see it that way?

Mr. BIBKO. Seriously, I am not fencing with you, Mr. Fortuna. Just the opposite. There is every question in my mind as to what my authority is under that section and what you cite emphasizes why it was difficult for me to answer the Congresswoman until I received an opinion from my regional counsel who is talking to the, Bob Perry, who is involved in that case.

Mr. FORTUNA. All the merits of the case aside, all the questions about hydrology aside, the basic question of, do you have the authority to grant this type expansion under 122.23C, specifically paragraph 2, is still in doubt in your mind?

Mr. BIBKO. I think we have authority to interpret the regulations as we have. I mean, the regulation is in black and white. Until it is changed, be it by consent decree or by Congress or by whatever means, that is what we are going to enforce. What I am saying to you, I am not fencing this kind of issue, I simply get concurrence from my regional counsel, I pull him in: Sheldon, Steve; and say, what are we doing here; I get a brief on it, and interrogate them every way I know how to make sure the same questions you are bringing up are answered in my mind before we make a decision.

Mr. FORTUNA. Just for clarity, one last time, what you are saying is it is not clear in your mind whether you have even, first of all, the authority to grant this type expansion?

Mr. BIBKO. I think it is clear I have the authority to. The regulation gives me the authority to do it. What modifications on that authority may result as a result of this consent decree or the issue the Congresswoman raised which, I will be honest, I don't know. The issue, can we consider costs in addition to just construction capital cost, the cost of moving people. I mean, these are things that aren't in the regs, so we have to get interpretation.

Mr. FORTUNA. The point is that industry itself interprets existing regulations as not allowing them to justify expansion because other disposal capacity is available and that is the point I am trying to get a determination on from your counsel; is that it?

Mr. BIBKO. That and many other things. What the industry may or may not feel, Mr. Fortuna, is not of paramount importance to me except that you know it affects our ability to implement that regulation.

Ms. MIKULSKI. John Griffin, were you aware of the uncertainty in the interpretation of the implementation of the expansion——

Mr. GRIFFIN. No, not at all.

Ms. MIKULSKI. Is this new to you?

Mr. GRIFFIN. Yes; I was just conferring with Mr. Michael Scibinico, behind me. We have been operating since late last fall when we embarked on this court on the assumption that not that we would receive interim approval for expansion—but that certainly both the State health department and EPA had the authority to grant it.

Ms. MIKULSKI. Mr. Griffin, I am glad we performed this service for you today, because one of the, and that is not a sarcastic comment. My concern in this expansion issue is that this is a grey area. There are precedents being made. Industry obviously interprets it differently as you have heard Mr. Fortuna elaborate. I will be happy to have him talk with you in detail about that.

You see, whatever the State does, or even whatever the State is prohibited from doing, I want to be something that is based on fact, and also on a long-term basis. I would not want an expansion to go through in which then later you are told, stop, don't do it, after you have worked with American Recovery, the community, all the issues that go into this. I wouldn't want you to proceed and then be told to stop.

At the same time, I would not want to see you denied, only to find out that you had justifiable grounds for your position. I want you to just note this and we will get you the additional information. I would encourage you, knowing, however, the pressures that are on the State, to really proceed with the utmost caution because of some of the information that has been brought out here.

There are other issues we could go into of long-term policy, the issues of the State both issuing the permit and being its enforcer, yet operating. These are policy questions; they are not personality questions at all. Those are other kinds of concerns that I have about this particular area.

But let me just conclude by this one last question to you about these. You were supposed to meet with regional EPA on I believe November 10, 1981, to discuss expansion of the Hawkins Point facility. Do you recall that?

Mr. GRIFFIN. No, I don't.

Ms. MIKULSKI. Do you have any files to yourself?

Mr. GRIFFIN. Yes, I do.

Ms. MIKULSKI. Because you see, I understand that meeting never took place. That you had an appointment with EPA to then say this is what we want to do and in fact get preliminary advice, assistance, legal, technical, all the things that you need to put in place to do a rather extraordinary undertaking. Did you meet with EPA? But then right after that, the expansion was announced. Did you believe you were on safe ground, and why did you believe so?

Mr. GRIFFIN. Well, my memory is a little vague on particular dates. But I do recollect that before the expansion was announced, not directly but by newspaper reporters, that Mr. McKewen and his staff consulted with Mr. Nelson and his staff, and that communications at least by phone were made with EPA region III regard-

ing the general legal basis upon which to contemplate an expansion. That is No. 1.

No. 2, I believe since then there have been meetings between Mr. Nelson and his staff and EPA region III. We can give you all the dates and times. And I believe Mr. McKewen himself and his staff traveled to Philadelphia, or staff traveled to Philadelphia to review the matter subsequently. So it has been my impression, let me answer this way in general, we will document the meetings we have had from the files and transmit them to you, that from the beginning we were mindful of the implementation of RCRA, the new regulations, interim status, et cetera. We have tried to guide ourselves along that path since late October, November, when we decided we had to go forward with this.

Ms. MIKULSKI. So both—Mr. Nelson, you are going to be the permitting, because you are the enforcer, right?

Mr. NELSON. That's correct. I am both.

Ms. MIKULSKI. The permitter—do you usually travel around with the people—God bless Mr. McKewen.

Mr. NELSON. I will concur with that.

Ms. MIKULSKI. If you were the Humperdink landfill, would you be going with him to EPA to do these things?

Mr. NELSON. No. I didn't. I did not.

Mr. GRIFFIN. They were separate.

Mr. NELSON. Let me tell you what I agreed to do. Early in the process, I advised the executive branch and also MES of their responsibility to get approval from EPA for an expansion under a revised application. Because they were unfamiliar with that I have a staff person on staff who is my liaison with region III. I offered to lend assistance of that staff person to them.

We attempt to help applicants through the process, not only MES, but other applicants, so they understand the process. That was the extent of my involvement. I assigned staff to help them get the right people in EPA to pursue it. I haven't been up there talking about this at all that I can recall, have I? I don't think so.

Ms. MIKULSKI. But your staff has.

Mr. NELSON. A staff person who is not either in permitting nor in enforcement. They are in program development and guidance.

Mr. MCKEWEN. My staff has also. Frankly, I don't know to whom they spoke. So as far as I know, we have not gone up together but I would say it is not at all unusual for a regulator and regulated to jointly speaking, to EPA to make sure everyone has the same understanding.

Ms. MIKULSKI. Well, I think again we could pursue other lines of questions about Hawkins Point. I am going to draw this meeting to a close. I think you note some of the concerns that you should have before your proceedings. I have noted a lot of concerns that I need to address and will be reviewing in the transcript.

It seems to me you thought, Mr. McKewen, that you were on the right track, that there was not this ambiguity, correct?

Mr. MCKEWEN. Correct.

Ms. MIKULSKI. And that this is the first time you have heard there might be some concerns?

Mr. MCKEWEN. I was aware there would obviously be concerns in the review process. We certainly were not anticipating a guaran-

teed approval. I was not aware of any doubt about the authority of the EPA to in fact concur in—to not permit an administrative action.

Ms. MIKULSKI. Thank you very much, and I would like to thank everybody for their patience in a long day. But I would particularly like to thank the transcriber.

Mr. BIBKO. Congresswoman, could the record reflect that is the information I referred to earlier that summarizes the large charts which we—sitting over there in the corner. It is a copy of them.

Ms. MIKULSKI. Thank you very much.

[Whereupon, at 7:05 p.m., the subcommittee adjourned.]

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